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CIS

TEMPORARY WORKERS

HEARING
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS
FIRST SESSION
ON
A NEW TEMPORARY WORKER PROGRAM WITH MEXICO

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TEMPORARY WORKERS

THURSDAY, OCTOBER 22, 1981

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2228, Everett McKinley Dirksen Senate Office Building, Senator Alan K. Simpson (chairman of the subcommittee) presiding.

Also present: Senator Grassley.

Staff present: Richard Day, chief counsel and staff director of the subcommittee and Donna Alvarado, counsel.

OPENING STATEMENT OF SENATOR ALAN K. SIMPSON

Senator SIMPSON. Well, here we go again. Good morning.

We have another tough issue to address today. Let me just share with you that during my stint with the Select Commission on Immigration and Refugee Policy, I found that this issue of temporary workers was one of the most controversial reform proposals before us, with the possible exception of the I.D. system. I wouldn't want to leave that one out, because the I.D. system must undergird employer sanctions.

Persons on both sides of the issue seem to be convinced that the adoption of a temporary or a guest worker program will either critically jeopardize or actively promote their continued economic existence. It is also interesting to note, at least it was for me, that we find traditionally restrained employer groups seeking to expand the number of foreign workers to be admitted to the United States, while labor unions, which have in the past found much realistic support among new immigrant groups, are opposed to temporary worker programs.

So this Nation of ours has been historically and consistently ambivalent about enforcing its immigration laws. This has resulted in some sectors of the economy, particularly in the Southwest, actually becoming dependent on a migratory flow of illegal workers for labor needs.

FOREIGN WORKERS

Employers in those States, in those areas of America argue that if the Federal Government is really going to enforce immigration laws through increased enforcement of employer sanctions, then their businesses must have access to foreign workers since U.S. workers have refused the jobs that they provide. Conversely, organized labor, minority groups and church organizations have decried large temporary worker programs as undermining the rights of foreign workers and, of course, the rights of those U.S. workers at the very lowest levels of the labor market. So I am sensitive to both of those arguments.

I come from a State where some businesses welcome ready access to foreign workers. As a young attorney in Park County, Wyo., I had personal experiences with the abuses of the bracero program. That was a county where we had one of the largest per capita uses of the bracero program. So in considering whether a new temporary worker program with Mexico should form a part of the overall immigration reform package, which includes employer sanctions, an identifier system, increased enforcement and a legalization program, it is important to weigh the potential short-term economic benefits of such a proposal against the potential long-range social dangers which might result.

BRACERO PROGRAM

I think that is especially true when we examine the experience of our own Nation with the bracero program where during its 22 years of existence, 4.5 million workers came in as braceros but 5 million others were apprehended as illegal migrants, 5 million were apprehended during that time.

Those numbers lead me to question whether a temporary worker program may actually create an incentive for illegal migration. We will pursue that. We must also look at the experience of Western European nations which brought in foreign workers whom they expected to be temporary but then found at the end of the program that although 2 million workers went back to their homelands, that 5 million remained in the host countries together with 7 million dependents.

In deciding whether a new temporary worker program with Mexico is a feasible policy option for the United States at this time, we must consider such issues as whether we can realistically enforce provisions and limits of the program, whether the importation of such workers will displace U.S. workers or depress their wages and working conditions, and whether such a program will create an underclass of workers in a nation whose basic ideals include a belief in the inherent dignity of the individual.

So certainly this is a touchy issue, a hot one, which is complicated by the lack of hard data on the illegal immigration system itself. But the time has come to address this issue just like all of the previous ones. I have not found any easy ones yet, so we will pursue this one headon with the best information that we do possess.

OUT-OF-CONTROL IMMIGRATION POLICIES

I think it is quite clear that the American people are no longer going to tolerate the out-of-control immigration policies which have been characteristic of our recent past.

I look forward to these hearings today. We have had a little change in the schedule, but you have seen the agenda. The lunch break has been accelerated to accommodate Senators Schmitt and Hayakawa, who will both be testifying.

So first, we have the administration panel. It consists of Alan Nelson, the Deputy Commissioner of Immigration and Naturalization Service of the Department of Justice, Frank Crigler, Director of the Office of Mexican Affairs of the Department of State, Robert Searby, Deputy Undersecretary of International Affairs of the Department of Labor, and Mr. James Barnes, General Counsel of the Department of Agriculture.

I think each of you have been advised of the time limitations. We have this remarkable timing device here, which is certainly disconcerting but very appropriate, from my experience in hearings in this place, except that the witnesses don't get to use one of those on us. That is the only inappropriate part of it.

So if you will proceed in the order as listed on the witness list and agenda, we will certainly look forward to your testimony.

STATEMENT OF ALAN C. NELSON, DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

Mr. **Nelson**. Thank you, Mr. Chairman.

On behalf of the administration, Department of Justice, Immigration and Naturalization Service, we appreciate the opportunity to appear before you and the subcommittee. Doris Meisner, the Acting Commissioner, has been appearing, and she and I will be sharing the duties on the legislative matters here.

Certainly, as the administration has mentioned to you previously, Mr. Chairman, and to the subcommittee, you should be applauded for your prompt effort in holding this series of hearings on these tough issues, as you describe them, in the interest of the committee and of the Congress, along with the administration. I think as we all reflect the public concerns you addressed a moment ago to restore some firm and effective control over our immigration policies.

TEMPORARY WORKER PROGRAM

As you also indicated in your introductory remarks, the temporary worker program that we are addressing today has to be looked at as part of the overall package. As you point out, there are a lot of opinions pro and con about temporary workers and the extent of a new program or whether it should be tried. I believe that we have to deal with the backdrop of reality that we do in fact have a temporary worker program in the United States currently with the millions of illegal immigrants that are here. We must deal with that, and the whole thrust here is to shift from the illegal nature of that program to the legal approach.

ILLEGAL MIGRATION

No one knows the clear dimensions of the problem of illegal migration, but we know that we have apprehended over 1 million per year over the last 4 years and there obviously are more there, and the best estimates available are that we are talking about between 3 and 6 million illegal immigrants in the United States.

Certainly one of the issues that we have to deal with in the employment problems are in many cases employers have come to rely on illegal immigrants and that they have been a class outside the protection of the law. The purpose of the temporary worker program in the administration package is to avoid that problem, make it clear that exploitation will not occur and that the law applies and that it shall be unlawful to hire illegal aliens.

Other elements of the program, of course, have been addressed before by this committee. The legalization program, the expanded enforcement efforts that will be going on, the employer sanctions aspects and some of the antismuggling proposals are all integral parts and tie in, we think, very importantly with the proposed temporary worker program.

LEGAL MIGRATION

The thrust, as I mentioned, Mr. Chairman, on the temporary worker program is to shift to a legal migration factor and get away from the existing problem of the illegal one. The program in the administration's plan has a number of elements. It is clearly set forth as an experimental program, so we can use this as a test period. It is for a 2-year period. We are talking about 50,000 Mexicans that would be admitted under this program. It is for temporary work. Its procedures are set forth so that it will not displace American workers, and of course it is tied in, as I mentioned earlier, with a legalization program, which we think is an important element, as well as the employer sanctions, that all together can make this an effective program.

ADMINISTRATION OF TEMPORARY WORKER PROGRAM

An important element of the administration temporary worker program is that the State Governors will have a significant role. First of all they will decide whether their States should be in the program. We believe the more local determination of the problem and the solutions is very significant. So the Governor will determine whether to participate, the number of workers that his State would want to have within the overall limit, the type of jobs that should be included in the program or excluded from the program, and certainly determine the various local conditions.

H-2 PROGRAM

This is a shift from some of the other programs where the Secretary of Labor has more of a role. I might also mention that the H-2 program in existing law will continue, so this is not meant to displace or replace that, but to supplement it and give an approach to determine which or both can be effective.

There are procedures set forth in the legislation whereby the employer will go through certain processes to make his application for workers. They will go to the Governor, who will verify that the occupations are not on the State list of one with sufficient American workers. There is a role for the State Department and the consul in Mexico in issuing visas. The INS has a role as to the entry and the 12-month maximum time. INS also has a role as to tracking the departure, which we think is an important element, and we intend to centralize that to a more effective departure control.

WORKER RIGHTS

An important element, Mr. Chairman, is certainly the worker rights in this type of program. The thrust again is legalized presence. They therefore have legal status while being here. They don't have to hide or worry about apprehension or deportation. That improves their status, we believe, automatically. They are subject to the Fair Labor Standards Act, they are able to join unions, and probably the most significant thing is that these temporary workers are able to change jobs within the States and the types of jobs that are under the program, and that is a significant difference from other programs. It will eliminate exploitation.

The employees would be able to return home for visits. They would not be entitled to social benefits or to bring their families, and we think that is important in the overall program.

There are procedures for monitoring this program. There are procedures that violators will be deported or the employee will be barred from further participation. Finally employer sanctions are an important element.

Again, Mr. Chairman, we feel this experimental worker program is an important element in the overall package and commend it to your consideration.

I would like to submit our statement for the record and will be available for questions.

Senator SIMPSON. Thank you very much, Mr. Nelson. That is very helpful.

[The prepared statement of Mr. Nelson follows:]

STATEMENT OF ALAN C. NELSON

Mr. Chairman and members of the Subcommittee:

I am pleased to be here today to testify on behalf of the Administration's policy on immigration reform. First, I must applaud the Subcommittee for its prompt attention to this most important problem of national interest. Your extensive set of hearings planned to review aspects of the President's proposals indicate an awareness of the public concern that our Government regain firm control of our immigration policy. I welcome the opportunity to continue the dialogue with you as we move towards legislative action and implementation of these proposals.

The focus of our attention today is temporary workers. I am well aware of the strong interest that a number of you have in this matter. Let me share with you the reasoning that went into the development of the experimental temporary worker program. In the eyes of many people a temporary worker program already exists between the United States and Mexico. The problem is that presently we have no control over this program except through the deportation of some of the entrants. The exact dimensions of this illegal flow cannot be measured but we know that approximately one million illegal aliens have been apprehended annually for the past four years and an unknown number of illegal entrants or visa abusers enter or stay in this country every year. An estimated 3.5 million to 6 million illegal aliens from around the world are currently residing in the United States and there is every indication that this number will grow unless significant new enforcement authority and resources are given to curbing the illegal flow.

Due to past failures with enforcement policy and the necessary tools to execute it, some employers have come to rely on or prefer this illegal labor. It has also resulted in a sizable number of individuals who feel they stand outside the protection of the law and who are consequently exploited by some employers and victimized by others in the society.

Therefore, the Administration has proposed the following strategy to substantially reduce illegal immigration to the United States by expanding opportunities to work lawfully in the United States -- through the legalization of some illegal aliens who have been in the United States for a long period of time and through an experimental temporary worker program. The enforcement elements of this package include enhanced standard enforcement of immigration laws and the Fair Labor Standards Act, the enactment of legislation prohibiting the knowing hiring of aliens without eligibility to work in the United States, and cooperative international efforts against smugglers who prey on illegal immigrants.

The addition of the employer sanctions statute will end the excuse of employers who claim that they were not breaking the law by hiring illegal aliens and moreover they have no basis for knowing that the persons were here illegally. The employer sanctions procedures will screen out a great number of illegal aliens from attempting to enter the labor market and encourage others who are already here to return home.

The legalization program would recognize the significant number of illegal immigrants who presently live throughout America and hold jobs in which they are contributing members of our society. It recognizes that in the past we have tacitly accepted their illegal entry and presence by ineffective enforcement of our immigration laws. Those persons who meet the residency requirement and other terms of the legalization program, will end their shadow existence and vulnerability to exploitation. At the same time we would not attempt the impractical endeavor of rounding up and deporting the millions of illegal aliens already here. Even if this were practical, it would in all likelihood result in some violations of civil rights of U.S. citizens and permanent residents as well as significant disruption in the work place.

An experimental temporary worker program is another element of the overall effort to shift from a circumstance of massive illegal migration with inadequate controls to a clear and effective pattern of control over legal immigration and enforcement which curbs illegal migration.

The Administration proposes the establishment of a two year program to admit up to 50,000 Mexican nationals annually for temporary employment in jobs other than those for which there is an adequate supply of qualified and ready to work American workers. These jobs could be in any occupation -- skilled or nonskilled -- provided they are not on the government's list of excluded occupations. This would be an experimental program conducted during a period when a substantial number of illegal migrants would be legalized and free to work without fear of either deportation or exploitation.

The decision as to labor supply and the need for foreign workers will be made by individual state governors, because they are close to the local circumstances of both American employers and workers. In addition to placing the decision to participate in this program at the state rather than the federal level, the Administration's proposal would give the foreign temporary worker the right to change jobs to seek another employer in a shortage occupation in a participating state.

Under the proposed experimental program, governors would make the decision to participate in the program based on assessment of labor availability in their state. Each participating state would annually determine the occupations with an adequate supply of qualified and available American workers and the number of alien workers for whom employment in other occupations would not adversely affect their state labor market. These estimates would be submitted to the Secretary of Labor who would allocate to each state a proportionate share of the total 50,000 numbers on three factors: 1) the total number of states desiring to participate in the program; 2) the number of foreign workers estimated as being needed by all the states; and 3) the number requested by the individual states.

An employer wanting to hire a worker under this experimental program would apply to the governor of the state. The state government would verify that the proposed job was not on the list of occupations with an adequate supply of workers submitted by that state and that the number of state approved requests had not yet reached the total number of foreign workers assigned into the state for the year. Approved employer applications would be sent to the consulate in Mexico at which workers needed by the employer would apply for entry visas.

An American consulate official would verify that the worker was generally admissible under the immigration law and, if so, issue a visa. An immigration officer would inspect the worker at a port of entry and admit him or her for a period of up to 12 months. Under the terms of the visa, the worker could change employers, but would only be authorized to take jobs in a participating state and in an occupation lacking qualified, willing, and available workers for that state. The new employer would be required to report the hiring of the alien to the governor of the state.

Mexican workers admitted under this program would have significantly improved rights over illegal migrants currently taking some temporary jobs in this country. Although they could not bring their families with them, they could return to their homes during the 12 month period. While they would not receive a number of social benefits for which citizens and permanent resident workers are eligible, they would have a legal status, coverage by fair labor standards law, and the right to join unions and change employers. A clear legal status and the opportunity to change employers should eliminate the exploitation which can take place now.

The experimental temporary worker program would be monitored to insure that workers did not take jobs in nonparticipating states or in occupations for which have an adequate supply of American workers. Mexican workers admitted under this program who took other jobs or stayed beyond their period of authorized admission would be deported according to existing provisions of immigration law and also prohibited from future participation in this program. An employer who employed an alien in violation of the provisions of this section could be barred from further participation in the program and could be subject to other penalties under the proposed employer sanctions law. Departure of Mexican workers participating in this program would be monitored by the Immigration Service. Tracking travel documents (I-94's) issued at entry and returned upon departure would be centralized in one INS office.

Let me emphasize that the experimental temporary worker program proposed by President Reagan on July 30, 1981 is only one aspect of an overall program to curb the flow of illegal migrants into the United States. It must be evaluated within that overall program which includes new enforcement measures as well as the legalization program.

I will be glad to answer any questions you have about the proposed temporary worker program.

Senator SIMPSON. And now Mr. Crigler.

STATEMENT OF FRANK CRIGLER, DIRECTOR, OFFICE OF MEXICAN AFFAIRS, DEPARTMENT OF STATE

Mr. CRIGLER. Thank you very much, Mr. Chairman.

Let me summarize what we have submitted in the way of a statement and try to avoid what Mr. Nelson has already covered. I would nevertheless like to underscore one point that he made, which is that the temporary worker program is a part of a larger package and it must be viewed in the context of this larger package.

I think this package has been put together to reflect this conflicting currents of opinion that you yourself have described which we face in the United States right now, those who would regulate the flow and those who would attempt to restrain the flow. Measures in this package address both those attitudes, it seems to me, and balance them in as effective a fashion as is possible.

The temporary worker program aims at regulating the flow more than restraining. Other measures in the package are more directly aimed at restraint.

Another aspect of the temporary worker program I would like to point to is that it is a pilot program and designed to obtain data, which I think we badly need, for how such a program on a larger scale would operate in today's world. We have the experience of the past, but the circumstances have changed since the period from 1942 to 1964. We need accurate data today. A pilot program of this modest scale would afford us an opportunity to develop that information.

ROLE OF STATE DEPARTMENT IN GUEST WORKER PROGRAM

The role of the State Department in the implementation of this program consists of two aspects, one really fairly routine, the other one more open-ended and difficult to predict. The first is the role of the consular officer in implementing the request for temporary workers from Mexico. He would receive the validated work offer from the United States coming from the respective States, interview applicants who have been contacted in one way or another in Mexico who applied at his consulate for visas, and adjudicate their applications pretty much on the basis of present law.

That would be the end of the consular role for the State Department in managing this program. The broader, more difficult aspect to predict has to do with the political relationship between the United States and Mexico, which will be necessary in order to set this program into motion and to operate it.

IMMIGRATION FROM MEXICO

You mentioned the serious disagreement within this country as to whether there should be a flow, legal or illegal, into the United States from Mexico of workers. I think the same debate rages in Mexico, although not quite so dramatically and openly. There is serious disagreement within Mexico as to whether this flow should be encouraged or restrained. It will be necessary for the Mexican Government to make up its own mind just as our own Government is having to make up its mind what is the best way to face up to this flow. We have regularly briefed the officials of the Mexican Government on this program, the whole package as it has been developed. They have appreciated our briefings but have found it appropriate not to make any official or formal statements of agreement or disagreement until the program is formally presented to the Congress.

WORKERS' RIGHTS

In any case, once the legislation for a temporary worker program has been approved, precedents suggests that it will be necessary to reach a bilateral agreement with the Mexican Government on just how it would operate. What is clear is that Mexico's concerns are primarily in the area of protecting Mexicans beyond their borders residing or working in the United States, and we can feel confident that the Mexican Government will insist upon protecting those rights under any bilateral agreement relating to this program.

Workers' rights, the wages that those workers would be paid, the conditions of labor under which those workers would be contracted, probably terms under which contractors would hire those workers in Mexico would also be included in any agreement with Mexico.

Let me simply conclude, then, by saying that we look forward to an opportunity to negotiate the implementing agreement with Mexico for a program of this sort and are confident that the experience we will have with a pilot program of this scale will enable both sides to draw conclusions from that experience which will enable us to determine whether a broader program is appropriate.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you so much, Mr. Crigler.

[The prepared statement of Mr. Crigler follows:]

PREPARED STATEMENT OF T. FRANK CRIGLER

Mr. Chairman, members of the subcommittee, I am happy to be able to take part along with the representatives of other agencies in this most important discussion of the administration's proposed temporary worker program. The Department of State supports the program not because be believe it is the single measure that will resolve our immigration problems, but rather as one part of a balanced package, that, if adopted as a whole, will provide us with mechanisms to enable us to approach the problem in a comprehensive manner. And it is only by attacking all of the aspects of the problem that we can achieve a complete solution. In addition, I would point out that this is a pilot program, an attempt to establish the data that will permit us to make an informed decision as to whether there should be a permanent temporary worker program.

My colleagues have described to you the administration of the program from their standpoints. My Department's role in this program will be equally important. Consular offices in Mexico will receive validated job offers from the various states. Prospective workers recruited to fill the positions described in the job offers will apply for the requisite visas. Consular officers will adjudicate the applications under the general admissibility requirements of the INA and will issue visas to those eligible. If the validated job offer names specific workers, the consular officer will verify that the applicants are the workers named. If the validated job offer merely specifies a fixed number of workers without naming them, the consular officer will ensure that the number documented for the employer does not exceed the number authorized. I should note here that this procedure is virtually identical with the procedure now followed with approved H-2 temporary worker petitions. Thus, while this program will cause an increase in consular workload at posts in Mexico, it should cause minimal disruption since no new procedures are required to administer it.

I hardly need add that this proposed program is of great importance to United States-Mexican bilaterial relations. Throughout the history of both our countries, and before either was an independent nation, there has been a considerable migration across what is now our southern border. In recent years, this question has become a preoccupation for United States and Mexican policymakers. Mexicans have sought work in the United States for many years but during World War II our need for workers became dire and we instituted a temporary worker program to relieve the shortage. The program existed between 1942 and 1964 and, clearly helped satisfy our need for additional labor during the World War II and Korean emergencies. According to some, it also stimulated illegal immigration and depressed the U.S. labor market after the emergencies were past, but here the evidence is less conclusive.

Mexican opinion on the question of a temporary worker program is as sharply divided as that in the United States. On the one hand some say that Mexico benefits politically, socially and economically. They point to the "Bracero" program and the amount Mexicans earned under it and they caution that the Mexican economy could not stand a large cut-off of the remittances presently being sent by workers in the United States. Advocates also point to the lessening of social and political pressures of the reduction in unemployment, the so-called "safety-valve" argument. On the other hand opponents point to the subservient role in which they believe this places the Mexican and to the wound to the national pride they see in having to export workers. President Lopez Portillo said "Mexico wishes to export goods not workers".

To Mexicans the history of northward migration also suggests that many workers have been exploited and that United States law has permitted the exploitation. For this reason the Mexican Government can be expected to monitor carefully any progrm to ensure that the rights of Mexican workers will be protected and to be able to point out abuses. Mexico would insist that the program provide Mexican workers with fair wages and suitable working conditions. Mexico also would be concerned that the program could draw badly needed skilled workers from Mexican industry.

To allay official Mexican concerns we have briefed the Mexican authorities on several occasions about the administrations proposals, including the temporary worker program. The Mexican Government has not officially commented on the administration's package, pending its formal submission to Congress. Nevertheless, we can expect that Mexico will require the conclusion of a bilateral agreement on temporary workers, including certain guarantees of the rights of Mexican workers and stipulations governing the hiring process. There is a legal basis in Mexico for such a requirement. Article 123 of the Constitution of 1917 provides that foreign employment contracts must be validated by local Mexican authorities. There is also precedent for a bilateral agreement in the "Bracero" program. Between 1942 and 1964 the United States and Mexico concluded a series of agreements on temporary workers under which well over 4 million Mexican workers entered our country. Naturally the Department of State will have a leading role in negotiating any such agreement and in resolving any bilateral questions it may occasion.

There are of course critics of the temporary worker concept in both countries. But if we are to be able to settle some of the questions that exist about illegal immigration, we are going to need mechanisms to develop basic data. And if we are going to consider establishing a permanent temporary worker program that will satisfy the need of both countries we must have the basic data that a trial program will provide. I will be happy to answer any questions on the subject you may have.

Senator SIMPSON. Now Mr. Searby.

STATEMENT OF ROBERT W. SEARBY, DEPUTY UNDER SECRETARY FOR INTERNATIONAL AFFAIRS, DEPARTMENT OF LABOR

Mr. SEARBY. Thank you, Mr. Chairman.

I will excise some of the aspects of my written testimony that I think complement and do not repeat the other witnesses' testimony.

I think that the proposals are more than a package. I think it is a unified policy. It is an organically unified policy. The temporary worker program as we view it can only work when we have the other aspects, especially the strong employer sanctions and an identification mechanism.

Viewed from a labor-market perspective, the large-scale legalization program and the small–scale experimental foreign worker program are intended to help cushion the otherwise disruptive labor-market adjustments, both at home and in Mexico, to the substantial reduction in job opportunities for undocumented workers which employer sanctions and increased labor law enforcement will produce.

Under the administration's proposal, the 2-year temporary worker program would be established for the temporary admission of Mexican nationals for employment in jobs in which there is not an adequate supply of qualified and ready-to-work U.S. workers. The jobs could be in any occupation, either skilled or unskilled. The jobs could also be in occupations of a temporary or permanent nature.

Because the program is an experimental one, it would not only be limited in time to a 2-year trial period, but of course also in the amount of people, limited in size to 50,000 workers per year. Under this proposal, States wishing to participate in the experimental program would determine for each fiscal year the occupations with an adequate supply of qualified and ready-to-work U.S. workers and the number of alien workers for whom employment in other occupations would not adversely affect their labor market within the State. These estimates would be submitted to the Secretary of Labor.

ROLE OF DEPARTMENT OF LABOR IN TEMPORARY WORKER PROGRAM

The role of the Department of Labor in the program would be twofold. First the Department would total the number of foreign workers requested by the States and then allocate the 50,000 annually available temporary worker visas among the States requesting such workers in as equitable a manner as possible.

If the requests totaled 50,000 or less, the Department would simply assign each participating State the number requested by that State. If the sum total of requests for alien workers exceeded the 50,000 annually available visas, the Department would assign to each participating State a share of the 50,000 total, taking into account the relative proportional size of each State's request.

In addition to responsibility for allocating visas among the States that wish to participate, the Department would also be responsible for an evaluation, a critical evaluation of this program. The evaluation would seek to assess, first of all, the characteristics and labor-market role of the Mexican nationals admitted under the program; second, the administrative feasibility of this type of foreign worker program, and third, its role in meeting U.S. labor needs.

EVALUATION OF PROGRAM

In undertaking its evaluation of the experimental program, the Department would draw upon three major sources of data: First, annual reports submitted to the Secretary of Labor by the Governors of the participating States; second, the Department of Labor field survey of workers, employers, and affected groups; and third, reports from INS regarding the entry and departure of Mexican nationals admitted under the program as well as violations determined through INS enforcement.

The Department's evaluation of this 2-year experimental program would then be used as the basis for a decision as to whether to continue or to expand the size of this type of foreign worker program.

This concludes my statement.

Senator SIMPSON. Thank you very much, Mr. Searby.

[The prepared statement of Mr. Searby follows:]

PREPARED STATEMENT OF ROBERT W. SEARBY

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to discuss the experimental temporary worker program component of the administration's proposed immigration and refugee policy reform package.

As the administration testified at the July 30 joint immigration subcommittee hearing, this proposed temporary worker program for Mexican nationals is one of five measures proposed by the administration to regain control over the unlawful entry of foreign nationals into our Nation and our labor market. In addition to this program, the package of measures recommended by the administration includes:

Increased enforcement of existing immigration and labor laws;

Sanctions against employers who knowingly hire illegal aliens;

International cooperation within the Americas to enforce our immigration laws; and

A program granting temporary resident status to illegal aliens in the United States before January 1, 1980. Aliens granted such status would also be permitted to adjust to permanent resident alien status after continuously residing here for 10 years.

Viewed from a labor-market perspective, the large-scale legalization program and the small-scale experimental foreign worker program are intended to help cushion the otherwise disruptive labor-market adjustments, both at home and abroad, to the substantial reduction in job opportunities for undocumented workers, which employer sanctions and increased labor law enforcement will produce.

Under the administration's proposal, the 2-year temporary worker program would be established for the temporary admission of Mexican nationals for employment in jobs in which there is not an adequate supply of qualified and ready to work U.S. workers. The jobs could be in any occupation, either skilled or unskilled. The jobs could also be in occupations of a temporary or permanent nature. Because the program is an experimental one, it would not only be limited in time to a 2-year trial period, it would also be limited in size to 50,000 workers each year.

Under this proposal, States wishing to participate in the experimental program would determine for each fiscal year the occupations with an adequate supply of qualified and ready to work U.S. workers and the number of alien workers for whom employment in other occupations would not adversely affect their labor market. These estimates would be submitted to the Secretary of Labor.

The role of the Department of Labor in the experimental program would be twofold. First, the Department would total the number of foreign workers requested by the States and allocate the 50,000 annually available temporary worker visas among the States requesting such workers in as equitable a manner as possible. If the requests totalled 50,000 or less, the Department would simply assign each participating State the number requested by that State. If the sum total of requests for alien workers exceeded the 50,000 annually available visas, the Department would assign to each participating State a share of the 50,000 total, taking into account the relative size of each State's request.

In addition to responsibility for allocating visas among the States that wish to participate in the temporary worker program, the Department of Labor would also be responsible for an evaluation of this trial program. The evaluation would seek to assess (1) the characteristics and labor-market role of the Mexican nationals admitted under the program, (2) the administrative feasibility of this type of foreign worker program, and (3) its role in meeting U.S. labor needs. In undertaking its evaluation of the experimental program, the Department of Labor would draw upon three major sources of data:

Annual reports submitted to the Secretary of Labor by the Governors of participating States;

Department of Labor field surveys of workers, employers, and affected groups; and

Reports from the Immigration and Naturalization Service (INS) regarding the entry and departure of Mexican nationals admitted under the program, as well as violations determined through INS enforcement activities.

The Department's evaluation of this 2-year experimental program would be used as the basis for a decision as to whether to continue or to expand the size of this type of foreign worker program.

This concludes my prepared statement. I would be glad to answer any questions you may have.

Senator SIMPSON. Mr. Barnes, please.

STATEMENT OF A. JAMES BARNES, GENERAL COUNSEL, DEPARTMENT OF AGRICULTURE

Mr. BARNES. Thank you, Mr. Chairman.

I will simply submit my statement for the record and make a couple of introductory remarks directed to the fact that the resolution of the immigration problem is of significant importance to the agriculture sector of our economy because of the significant use on a seasonal basis by agriculture of alien labor.

The Department strongly supports the initiative of this administration in seeking to get control over our borders and to obtain and to require to look to employers to have to use a legal work force in the carrying out of their productive activities.

In the course of providing a legal work force to the agricultural sector, there is, in our judgment, a close interrelationship between the employer sanctions, the amnesty that will ultimately be arrived at, the temporary worker program and the current H-2 program; that we need to look to these as a package to assess the impact on the agricultural sector.

With those comments, we would stand ready with the other members of the panel to address any questions that you might have.

Senator SIMPSON. Thank you.

[The prepared statement of A. James Barnes follows:]

PREPARED STATEMENT OF A. JAMES BARNES

I appreciate the opportunity to testify on behalf of the Department of Agriculture concerning the temporary worker program proposed by the Administration as part of the immigration and refugee policy package.

The proposed temporary worker program is outlined in the testimony today of my colleagues from the Departments of Justice and Labor. Rather than repeating that information, I would like to direct my testimony to the importance of the program to the sector of the economy for which USDA has the primary responsibility.

There are an estimated 300,000 to 500,000 illegal aliens currently employed in agriculture, constituting as much as 20 percent of the total hired farm work force. Many of them are true international migrants who come to the United States for a limited period of time each year and then return to Mexico with the fruits of their labor. While the illegal aliens are found working in agriculture throughout the country, they are concentrated in the belt from Texas around to and up the west coast. The majority of these illegal aliens work with vegetables, fruit, melon, nut and horticultural specialty crops. During the short harvest window, growers of many agricultural commodities, particularly certain fruits and vegetables, need large numbers of workers and the need cannot be satisfied from the available domestic labor supply. For example, the raisin harvest in the San Joaquin Valley in California employs over 125,000 workers for a 4-6 week period. At the present time, a significant number of these workers are believed to be illegal aliens.

Thus, it should be recognized that the agricultural sector currently depends on the use of alien labor and that its highly perishable crops and seasonal utilization of that labor makes it markedly distinct from other economic sectors, such as the garment industry, which use alien labor on a year-round basis. Consequently, agriculture will be significantly affected by the form of immigration and refugee control that is finally adopted.

The Department believes that the administration's package is responsive to the need to substantially reduce the amount of illegal immigration to the United States and to expand the opportunities of legal aliens to work lawfully in the United States. In assessing the effect the package will have on agriculture, it is important to note that there is a close inter-relationship between the proposed employer sanctions, amnesty provisions, and temporary worker program—and the current H-2 program.

The temporary worker program will not—by itself—meet the labor needs of agriculture, but it can be contributing factor. However, the administration's program as a whole, together with an H-2 program and available domestic labor can provide an adequate supply of legal labor to agriculture. This will help restore respect for the law and relieve the producer who heretofore has had to rely on illegal aliens as part of his work force, of the risk that part or all of this work force might be deported in the middle of the harvest and leave him with no alternative source of labor to save his perishable crop. It will also bring the full protection of the law to those aliens who—through the amnesty, temporary worker and the H-2 program—will have the legal right to work in the United States—and will avoid the harassment and exploitation to which many of the illegal aliens are now subject. Providing an adequate supply of legal labor will reduce the pull effect for additional illegals to come into the country and thus enhance the integrity of the entire immigration control program. It also will benefit the consumer by allowing a larger variety of agricultural products to be available at competitive prices rather than artificially triggering changes by growers to less labor intensive crops.

The effective implementation of the administration's immigration reform package—including the temporary worker program—will help this country regain control of its borders.

I will be happy to respond to any questions you may have.

ILLEGAL IMMIGRANTS STATISTICS

Senator SIMPSON. I will just scatter these questions around the panel a bit, and hopefully we will develop some additional thoughts here.

I would ask Mr. Nelson if INS apprehension statistics reflect that illegal immigrants now being apprehended are actually largely in seasonal and unskilled occupations which U.S. workers will not perform? And, second, what is the trend in the predominant occupations and wage levels of those that are presently being apprehended by the INS?

Mr. NELSON. Mr. Chairman, I have some statistics here. I would be pleased later to submit them to the committee for your perusal also. Our statistics from INS break down the categories as follows: heavy industry, light industry, agriculture, construction, service, and of course the totals of those. We have them for the last 3 years. I understand 1980 might be a little bit off because the census somehow changed a little bit.

While agriculture is a large percentage, about 40 percent in 1980, that has been declining. It was higher in previous years. So we see a shift away from the agricultural areas into the others, with the other categories I mentioned picking up.

It is also interesting that the chart does reflect the wage levels, below minimum wage, and then the various categories above minimum wage, and that about 60 percent or thereabouts are higher than minimum wage. So while it is hard to break down within that the exact nature of seasonal to others, it appears that the trend is more and more away from agriculture. The trend is to higher wages, even a higher percent above minimum wage, and of course minimum wage has been raised recently, and it looks like more permanent work than seasonal in many aspects.

Senator SIMPSON. So those are things that have become evident in the last 3 years?

Mr. NELSON. Those are the statistics we have available currently. I do imagine we will be able to go back further than that also. That is all I have presently.

Senator SIMPSON. What was your most current date?

Mr. NELSON. For fiscal 1980.

Senator SIMPSON. But the shift is very apparent in the figures.

Mr. NELSON. It appears that way, yes, sir.

WAGES

Senator SIMPSON. The trend is shifting away from the seasonal, and what most of us think of in America as a seasonal and unskilled occupation, a minimum wage job. Your records and statistics show that they are appearing less in that area or category and that, as you say, 60 percent of them are paid above the minimum wage.

Mr. NELSON. That's correct, sir. We would read it that way.

Senator SIMPSON. Under the INA—the Immigration and Nationality Act—it is the Attorney General who is empowered to authorize the admission of nonimmigrants to the United States.

Yet, in reviewing the administration's program proposal for a new temporary worker program I see a precedent here being set. I would like some more information, since it would seem to broaden the delegation of this authority to the Department of State's Consular Division.

ROLE OF INS IN TEMPORARY WORKER PROGRAM

Will INS have any part to perform in the process in this temporary worker proposal? If not, could you explain the rationale for leaving the INS out of this procedure?

Mr. NELSON. Mr. Chairman, certainly INS and the Justice Department Attorney General retain a very significant role in this. INS will still handle all of the border entry and inspection aspects of this. They will also, of course, monitor the departure aspects. And to the extent this program would tie in with employer sanctions we, likewise, along with the Department of Labor and others, would be working in that area.

I don't really think that it is entirely a new precedent, that we are still talking in terms of visa procedures that are basically similar to what is going on now.

I think compared to the H-2 program, what we are avoiding in this new temporary program is the avoidance of the petitioning aspects, but while we see a joint effort here and a need for a joint effort between the State Department, Labor Department, Agriculture, and Justice, we certainly don't see any giving away of significant INS role in this area.

Senator SIMPSON. Mr. Crigler, do you have any response to that question?

Mr. CRIGLER. Yes, Senator.

ROLE OF STATE DEPARTMENT IN TEMPORARY WORKER PROGRAM

I don't see essentially any change in the role of the State Department in the implementation of a program of this sort from what its role is in the case of H visas, for example.

The State Department Consular Officer's role remains essentially the same—to adjudicate the applications that are presented to him.

Senator SIMPSON. I guess the question, even more precisely, is whether the INS will be at all involved with regard to admissions?

Mr. NELSON. Yes, sir, certainly at the border. People would come in with their visas and they would check the applicability and make other appropriate determinations as to admissibility.

Senator SIMPSON. I think that has to be precise in any regulations or legislation that we will come up with.

Just one other question, and then I will come to others on the panel.

H-1, H-2, AND TEMPORARY WORKERS PROGRAMS

What would be the relationship, if any, of this proposal to the H-1 and the H-2 programs? We, in the Select Commission, you know, grappled with that. It appears that what we are going to have here is two similar programs. I mean, it is easy to be technical and talk about H-1 and H-2 and temporary workers and to say that they are totally separate and apart, but they will be similar, at least in the eyes of the public, operating at the same time, one administered by the Department of Labor and the INS and the other one administered by the States and the Governors and the legislatures and the Department of State.

What is the relationship of the two programs?

Mr. NELSON. Well, Mr. Chairman, I think you're right. There will be two programs and I think this is one of the thrusts of the administration package and the experimental nature of this is that there aren't any easy answers, as you have indicated in your opening remarks, and that we will learn more by trying these different approaches, particularly with States having a role, particularly, also, with the temporary worker program in the administration package being noncontractual, unlike the H-2.

The workers have more freedom to move around and we think that's an important element to test. The H-2 program had about 47,000 people come in last year and, assuming it continues at the same level, they would be of a fairly comparable size and that would be good to test the two programs side by side.

We recognize that the Select Commission leaned toward the continuation or expansion of H-2 and we think ours is a good balance of trying different approaches and, in the process, determining which works better and where to go from there.

Mr. SEARBY. Mr. Chairman, I think it is a good question to follow up on and make the distinctions between the H-2 program and the temporary worker program and the goals of the temporary worker program. There are major differences that can be made between the H-2 program, the temporary worker program.

The temporary worker program is a component not of a labor market related or temporary worker bill, if you will, but rather, as we said, of a package or organic policy to deal with illegal immigration. The temporary worker program we are proposing is geared toward resolving the problem of illegal immigration from Mexico.

The H-2 program isn't whatsoever. There are several distinctions.

Senator SIMPSON. Let me come back to some questions in that area for you. I understand what you are saying, but let me develop questions with Mr. Crigler and then I will move right on down the panel. We will have plenty left over for you in that area.

AGREEMENT WITH MEXICO

Mr. Crigler, will this program necessitate any type of formal agreement with Mexico?

Mr. CRIGLER. There is nothing intrinsic in the proposed legislation that requires a formal agreement with Mexico, but I think on the basis of historical experience it is strongly implied.

As you know, for the bracero programs in the 1940's and 1950's we did indeed have bilateral agreement with Mexico. The Mexican Government has continued to be greatly concerned to protect its nationals who migrate across the border, either temporarily or permanently, and I think we can expect that Mexico would insist upon an agreement of some sort in order to implement this particular program.

Senator SIMPSON. I think it seems to me that that would be so. I just wondered what steps the Department was taking to insure Mexican concurrence and cooperation in such a program and whether there is negotiation going on to do that.

Mr. CRIGLER. There are no negotiations going on right now, Mr. Chairman.

We have scrupulously attempted to keep the Mexican authorities apprised of the development of this package of proposals and of the contents of the package at each stage, including a rather extensive briefing by the Attorney General when the two Presidents met at Camp David in June.

CONCERNS OF MEXICO

Senator SIMPSON. What do you think some of the primary concerns might be of the Mexican Government in this area?

Mr. CRIGLER. The concerns which have traditionally been reflected by the Mexican Government, notably protection of the individual rights of the Mexican workers, assurance that they are paid fair wages, wages similar to those that would be paid to an American worker. The transportation, housing and other more mundane aspects of the treatment of the worker would certainly be concerns of the Mexican Government and, finally, the procedures by which the worker is contracted.

Senator SIMPSON. Do you envision that that might be in the form of a treaty when it is arrived at—something that would require the ratification of the Senate?

Mr. **Crigler**. I don't know, Senator. It would not necessarily require a treaty. It would depend upon the judgment of both governments as to whether this step were necessary.

RECRUITMENT OF MEXICAN NATIONALS

Senator **Simpson**. Let me just ask one more.

We have, right now, about 380,000 Mexican nationals legally entitled to immigrate to the United States. We are going to go through a program of 40,000 for Canada, 40,000 for Mexico, but with unused portions going to the other country, which will be about 70,000 for Mexico in reality.

Why would not the recruitment of temporary workers be limited to those individuals, rather than advertising and recruiting among an entirely new group of Mexican nationals?

Mr. **Crigler**. Well, there is a fundamental difference of purpose between those two activities.

Senator **Simpson**. Family reunification I am aware of.

Mr. **Crigler**. Family reunification, yes, but, more important, in our view, Mr. Chairman, is the idea that the temporary worker program should, in fact, be to provide temporary workers or workers temporarily in the United States.

The 380,000, or however many there are right now, are in fact intending immigrants. These people intend to remain in the United States and are prima facie not temporary, with respect to their purposes for entering the United States.

PERMANENT RESIDENCE AND TEMPORARY WORKER PROGRAMS

Senator **Simpson**. We have information, at least through our work, that the Mexican Government actually has a much greater preference to seeing increased numbers for permanent residence rather than temporary worker programs.

What is your view of that?

Mr. **Crigler**. I don't share that impression, Mr. Chairman. I'm not sure how your committee has obtained this impression from the Mexican authorities.

Senator **Simpson**. We will share that with you and be interested in your views. We will get together on that with staff members and that will be helpful, because we do get that impression from authorities.

H-1 AND H-2 WORKERS

So let me now come to Mr. Searby and ask you how many H-1 and H-2 workers have been certified for admission to the United States during each of the past 5 years.

Mr. **Searby**. The Department of Labor does not certify H-1 workers. They are temporary workers of exceptional merit, such as the opera star Pavarotti. They are permitted in the country as exceptional workers, regardless of U.S. worker availability.

On the H-2 program itself, the numbers fluctuate depending upon the amount per year of employer applications for workers, but the average over the past 5 years has been 30,392. I have the breakdowns per year. It has gone up in recent years.

Senator SIMPSON. How many have actually been admitted, then, after the certification process? That number is going up each year, is it not?

Mr. SEARBY. Yes; the certification process and the numbers admitted, they tend to track one another.

Senator SIMPSON. I guess I should ask what is the difference between—even though you have described certification, which is imprecise, but what is the difference between those certified for admission and how many actually admitted?

Mr. SEARBY. The actual numbers?

Senator SIMPSON. Yes.

Mr. SEARBY. We certified, in 1980, 43,000—1979 was 38,197 and 1980 was 43,066. It's approximately that number that are actually on the job.

Senator SIMPSON. Would you submit those figures into the record for us as you have them, Mr. Searby?

Mr. SEARBY. Certainly.

OCCUPATIONS OF IMMIGRANTS

Senator SIMPSON. What occupations do those workers primarily fill?

Mr. SEARBY. In 1980 the agricultural workers—of the 43,066, agriculture was 18,371. Nonagriculture was 24,695.

We noticed that from 1979 to 1980 the increases in the last 2 years have been increases in certifications for tobacco growers in Virginia, growers of fruit in Colorado and Maryland and Pennsylvania. That is in the agricultural field.

Senator SIMPSON. Can you share with us the rationale of the Labor Department for creating a new temporary worker program of equal size to the H-2 program, but where the Department will have very little or no say in the protection of U.S. workers?

PURPOSES OF PROGRAMS

Why not just expand the H-2 program with special emphasis on Mexico?

Mr. SEARBY. The H-2 is definitely geared to labor market needs, while the temporary worker program is geared to the illegal immigration phenomenon.

In essence, the new experimental worker program we are proposing is an attempt to deal on a small scale, make a small-scale legal substitute for the Mexican illegal immigration that we see now.

The purpose of the program, the temporary worker program, as opposed to the H-2 is twofold. One is to give a cushion, even if it is a small cushion, a link to the much larger legalization program, to blunt labor-market disruptions, when employer sanctions go into effect.

The temporary worker program component is also designed to specifically test administrative feasibility and the labor-market impact of a minimally regulated program for the legal admission of Mexican temporary workers.

It has been designed to be different from the H-2 program—there's no doubt about it—both in goals and the manner in which it is administered. That's why it needs to be experimental, monitored, and evaluated.

Senator SIMPSON. It would be unique and delightful if we could separate the economic aspects of the H-2 program, that is, jobs that others won't take, and the fact that the temporary worker program is one to be a part and parcel of a reform of immigration and refugee policy.

But I have a hunch that that won't occur, that that line will never be distinct, because as you see the testimony and as you will hear it today and as you have seen it wherever you have seen it, the temporary worker program is to help people who have become dependent on cheap labor. I mean, that's where it goes.

EMPLOYER PERCEPTION OF IMMIGRANT WORKERS

You can talk about all the other things you want to talk about, but that is where the public perception and employer perception sometimes goes. So even though I hear your distinction, I don't know that the American public and the employer community and those that are in business and hire those persons will make that distinction.

Well, the Department of Labor has contracted and endorsed studies which have shown that the U.S. experience with temporary foreign workers is such that many employers, once they have been exposed to the productivity and docility, if you will, of these workers, actually find ways to discourage U.S. workers from applying, remaining in those jobs.

We have evidence of that occurring. It has been pointed out that these employers or their recruiters, when given the choice of being able to handselect a foreign worker without regard to affirmative action laws and other protective laws, they have come to actually prefer foreign workers.

In light of those findings and based on those studies that I'm sure you have reviewed too, how does the Department respond to the assertion that such a program will not be a trial at all, as is said, or a pilot simply because employers will find ways to discourage U.S. workers and justify a continuing need for foreign labor?

FREEDOM OF CHOICE

Mr. SEARBY. Although U.S. employers will be able to handselect, as you put it, the 50,000 foreign workers at entry, workers in this program, unlike the current H-2 program workers and the old bracero program, will be free to win or free to lose within the U.S. labor market.

The key is that they are free. They do not come in tied to an employer for the duration of their stay in this country.

The arguments that you mentioned as to whether U.S. workers are willing to take jobs filled by foreign workers, whether legal, illegal, whether temporary migrants or permanent immigrants, these arguments are as old as the U.S. immigration laws and the debate that has been going on for many decades.

The administration's program is quite specifically, I think, designed to provide the Government with some new data on this conflict and to provide an empirical basis for evaluating these conflicting claims, which we agree are likely to continue. It's one of the reasons why the emphasis should be on experimental, on the differences between this program and others, and on the monitoring and evaluative mechanisms.

EUROPEAN EXPERIENCE

Senator **Simpson**. Well, let's take a quick look at the European experience. It has shown us rather clearly that when temporary workers are brought in for permanent jobs, jobs that last 12 months of the year, the workers tend not to be temporary at all but to remain in the host country, legally or illegally, and to bring their family members.

Is there any provision in this proposal to insure that the jobs to be filled by the foreign workers are in fact temporary?

Mr. **Searby**. Well, first off, in the new temporary worker program they are temporary workers, but the categories of jobs they can in fact be employed in are either temporary or permanent jobs. But they themselves are temporary workers with a limit on their visa.

2-YEAR PROGRAM

I think the administration's temporary worker proposal was developed with the deleterious effects of the European experience in mind. For example, family members are explicitly barred from entry under the program. Alien workers admitted under the 2-year program must return at the end of the year-long visa and they can return to a job they held only if the State in which they worked continues to participate in the program and continues to view that job category as one of those categories in which foreign workers may work.

In addition, workers admitted under this program are not eligible for unemployment insurance or other benefits that were available to European guest workers and they are explicitly barred from adjusting their status to that of a permanent resident.

Senator **Simpson**. One of the things you discussed is the great difference. That's something I have a great deal of difference with the administration on, and that is the inability for this person in this particular new status to be united with family members. That one bears careful attention, I think.

MONITORING DEPARTURES

I have a problem with seeing how if the INS cannot effectively monitor nonimmigrant departures now, and they can't, how will the Service monitor temporary worker departures and could that even be handled under the present budget?

Do you have any response to that, Mr. Nelson?

Mr. **Nelson**. You are correct, Senator Simpson. Certainly under the current situation we cannot. I think we have two aspects of that.

One is with employer sanctions, we will have a tool we do not have now. The employer sanctions plus more efficient border enforcement we think can be very effective.

The other aspect of the administration program is the turning of the battleship around, if you will, to shift from the illegal situation which we have, which is out of control, to a legal one. It is not going to be easy, but I think we are heading back in the right direction where we do have programs that are set up as a legal way for immigration together with the employer sanctions and better border enforcement, and that all of these together can do an effective job.

IDENTIFIER SYSTEM

Senator SIMPSON. Well, I understand the administration's position there, but in my opinion the illegal flow will not be stemmed because the administration has left out a very significant part. That important omission is some form of an identifier system that will work.

So there will be no temporary worker program that will work until we have stemmed the flow of illegal immigration, and we will not do that until we have the three things, including an identifier system. And if we don't have that, then at least the American people ought to be advised that there has once again been a cosmetic approach, to the problem, but we have not solved it. That is my view.

AGRICULTURAL PROGRAMS

Mr. Barnes, please, do you have any estimate as to the percentage of illegal immigrants in the United States who are employed in agriculture? What figures do you have there? What percent of the temporary worker program would be targeted for agriculture?

Mr. BARNES. Addressing the two questions you have put, first, our best estimate is that some 300,000 to 500,000 aliens who are in the country illegally are now employed at some point during the year in agriculture, most of them on a very seasonal or short-term basis.

And I guess as to what percentage of that is illegal migrants in the United States, depends on what kind of base you use, whether you are working with 3 years or 6.

TARGETING WORKERS FOR AGRICULTURE

As to the second half of your question, the administration's proposal would not target a specific number of temporary worker jobs for agriculture. The allocation that in fact came forward would be dependent on what the requests from the individual Governors are and which occupational groups were designated within a particular state as being eligible for temporary workers to work in.

Senator SIMPSON. Do you believe that a streamlined, to use that definition—that's what the Select Commission talked about—a streamlined H-2 program could address the labor shortages in agriculture as well as would a new temporary worker program?

Mr. BARNES. I think that could be the case, Senator. I think as we move to a scheme where we are going to require employers to use legal workers that we are going to see increased applications by agricultural employers for H-2 workers, since the numbers that are involved in the temporary worker program are far short of what appears to be the use of alien labor in agriculture.

I know that we and others in the administration have received suggestions as to changes that might be made in the H-2 program that might facilitate the needs of the agricultural sector and I think those bear some discussion.

EMPLOYERS PREFERENCE TO FOREIGN WORKERS

Senator SIMPSON. How do you respond to the assertion that once employers get experience with a foreign worker, they come to prefer them over U.S. workers and therefore find ways to discourage U.S. workers from applying for jobs by giving them the most disagreeable tasks and other lessened incentives?

Mr. BARNES. First of all, I am not personally familiar with the Labor Department studies to which you referred. I know that from my perspective, and the talks and visits I have had with producers, I have not seen evidence of that.

The overwhelming preoccupation that I find from employers in the agricultural sector is that they have available adequate labor when they need it. When the harvest window comes up, for example, on something like winter peas, when they have a relatively short period of time, they need people there to do the work. It is that fact, much more than whether the workers are foreign or domestic, that is the major consideration to them.

Senator SIMPSON. Well, it pleases me to see the Agriculture Department deeply involved in the immigration issue. I think that augers well. It is important and overdue, and I appreciate your participation, and the Secretary's, because your involvement is certainly going to affect this area. It is just in these past months that we see this spirit of participation.

We appreciate that. It is helpful.

Mr. BARNES. Well, in turn, Senator, we certainly appreciate your including us in the hearings. We look forward to working together to address these very difficult issues.

AGRICULTURAL MANUAL AND MECHANICAL FUNCTIONS

Senator SIMPSON. I shall, too, Mr. Barnes. Do you believe that there are agricultural sectors and practices whose labor needs will always be addressed by human stoop labor, as is referred to, rather than mechanization?

Mr. BARNES. Well, while there have been I think considerable strides in the direction of mechanization, there are some things, some of the more delicate crops, some of the functions such as thinning of crops, pruning of trees, and so on, that I think are likely to be labor intensive.

I think one of the choices that we face as we go forward with a program that affects this sector is, if you basically make the stoop labor unavailable, you may tend to drive the production of some of those crops outside of the country, for example, which has happened in the case of tomatoes where there is now much more of the production of tomatoes in other countries.

You have to recognize that a number of these crops are very competitive in the worldwide sense, and we in the Department hope to keep American agriculture competitive with the rest of the world.

TEMPORARY U.S. FARMWORKERS

Senator SIMPSON. How many U.S. workers are there engaged in temporary farm labor?

Mr. BARNES. Out of a farm work force of about 5.1 million, we estimate that about 2.7 million of those are temporary farm laborers, and of those about 1.8 million work less than 150 days a year. This should give you some perspective of what percentage of the total farm labor force is of a temporary nature.

Senator SIMPSON. How about migrant labor pool, what is that?

Mr. BARNES. Well, divide that—our estimate is that there are about 200,000 domestic migrant farmworkers, and as indicated earlier there are 300 to 500,000 illegal aliens, and then the number of H-2 workers, I think the 18,000 figure has been used as to the number of authorized admissions. Our figure suggested that maybe there is some double counting there with some people that come in for more than one employer, and that the number of people that come in via that route may be closer to 12,000 per year.

ILLEGAL WORKERS

Senator SIMPSON. So we have the situation where the migrant labor pool in the last 10 years, or the last maybe 20 years, has gone down from, say, 400,000 to 200,000, while we have 300,000 to 500,000 illegal workers which you state are now working in agriculture. They outnumber the U.S. migrant workers perhaps even 2 to 1. Is that right?

Mr. BARNES. I think that is correct and I think the direction of U.S. policy has been to try to develop year-round employment in agriculture for those who were part of the domestic migrant pool, to prolong the period that they be able to stay in one locality. And I think that has contributed to the phenomenon you have just expressed.

Senator SIMPSON. Thank you. Senator Schmitt has been detained. He is with the Appropriations Committee, so I will have the luxury of being able to continue to fire away and see if we can develop an additional record in this area, because this is a critical one, indeed.

MEXICAN MONITORING OF PROGRAMS

Let us see. Mr. Crigler, are there or will there be any terms in this program—and I realize that it is necessarily vague at this time—but are there terms in this program enabling Mexican officials to monitor the enforcement of the rights of their nationals?

Mr. CRIGLER. Not in this program per se. But in the consular treaty between the United States and Mexico, consular officers of both sides have the right to monitor, as you say, the well-being, the treatment or the activities of their respective citizens. And I would be quite certain that Mexico would, as it does already, utilize the terms of this treaty in order to insure the well-being of their citizens under any such program.

Senator SIMPSON. Do you know of any information as to whether the Mexicans have indicated that they would prefer a program of larger dimension, or one which would offer their nationals the right to adjust status after working in the United States for a certain period of time?

Mr. CRIGLER. No, Mr. Chairman, I do not. We have not really got a very clear response, quite deliberately I think, from the Mexican Government with respect to the specific terms of this or any other proposed program.

RECRUITMENT PROCESS

Senator SIMPSON. Do you envision that the State Department will have any role in the recruitment process? What steps might be taken to insure that abuses do not occur, such as—well, any abuses.

Mr. CRIGLER. I think those are two separate questions, if you will forgive me, Mr. Chairman. The State Department would not have a role in the recruitment process per se. With respect to abuses of any recruitment or of the program as a whole, it would not surprise me if such abuses were to occur that the State Department were in a position of channeling communication between the Mexican Government and Washington.

CONCENTRATION OF ILLEGAL WORKERS

Senator SIMPSON. Mr. Searby, there has been a study of—a study that I think you have observed, and we have seen on the subcommittee, by Prof. Vernon Briggs of the University of Texas, who has demonstrated that illegal workers are concentrated disproportionately in the same occupations and geographical areas as the most disadvantaged U.S. workers: Minorities, youth, women; and those working conditions may actually be depressed by the presence of foreign workers, or these U.S. workers may be pushed out of the labor market and onto some kind of income-maintenance program, which then becomes an expense to the Nation.

In recommending that those jobs continue to be filled by foreign workers through a temporary worker program, what is the Department of Labor doing to protect the rights of the disadvantaged U.S. workers?

Mr. SEARBY. The greatest disadvantage that they have right now is the illegal phenomenon of enormous proportions, as we all agree. Certainly it is true that the increase in the supply of the workers with a particular skill tends to increase the competition among those workers. It is still important to remember that the program proposed by the administration once again is part of a package, and that package has a legalization program involved in it and the employer sanctions. As you noted before, the employer sanctions and I.D. mechanism are such a critical part of the program.

It is also important to remember that alien workers admitted under this program would be allowed to take jobs only in occupations where the State authority, the Governor in this case, of the participating State has determined an inadequate supply of workers in that State.

VOICING CONCERNS TO GOVERNORS

Senator SIMPSON. One of the things that interests me in the admission of skilled temporary workers under the current H-2 program, is that the Department often makes its determination of worker availability after consultation with the unions in their region. Now, would such consultation be required in this program? What recourse would a U.S. worker have in appealing the decision by the Governor of a State that sufficient workers in their occupation were not available?

Mr. SEARBY. The Department of Labor itself does not have a specific role on this matter. The bill we have submitted, or that we are submitting, is a call for a federalist approach, and it has a strong emphasis on that federalist approach, that it will be the State Governor's responsibilities and I would certainly think that all groups would have the opportunity to voice their concerns pro or con to their Governors.

It is not just the notion of the devolution in the federalist system. I think it is also the principle that the authority closest to the situation should have both the right and responsibility to make judgment on labor-market needs and adequacy, and also to be appealed to.

Senator SIMPSON. To be what?

Mr. SEARBY. To be appealed to by people who disagree within his or her constituency in the State.

Senator SIMPSON. It has been interesting on this issue throughout and in organizing the hearing that a number of employer organizations are organized to testify on immigration issues, but only agricultural employers expressed any interest in appearing. Others did not.

EMPLOYEE/EMPLOYER SUPPORT FOR TEMPORARY WORKERS PROGRAM

What other types of employees or employers have expressed support for a temporary worker proposal? Any of you can respond to this. Where is there any other interest for a temporary worker program other than agriculture?

Mr. SEARBY. I can only give the negative of that. That is, in my capacity I have not been approached by other groups. I don't know, that does not mean they have not been approaching other people and expressing their views.

Senator SIMPSON. It has been of interest to us. So if the program is purported to be used as a foreign policy instrument and many other things, is it really? That would indicate to me that it is not.

EMPLOYMENT OF ALIEN WORKERS WITHOUT ADVERSE EFFECTS ON LABOR MARKET

Let me ask another question. The provision states that the administration's proposal says that each participating State will estimate the number of alien workers for whom employment might be available in other occupations within the State without adverse effects on the labor market in the State.

What would be some of the things that would constitute an adverse effect? Who would measure it and what standards would be used?

Mr. SEARBY. I think I must answer that by taking the federalist approach on this. The States that wish to participate in the administration's proposed program would determine what would constitute adverse effect, and the standards by which it would be measured.

Senator SIMPSON. Well, we are going to have the situation where the States may, under this policy, will presumably best know the labor needs of the State, and I agree with that. I think that is true. I think the Governor and the legislature will know the labor needs of the State better than the Department of Labor. I believe that.

EMPLOYER SANCTIONS

But then, since there is no control really over the movement of the temporary workers from State to State, or they do have the ability here to leapfrog about under certain proposals, should not then the decisions about admissions of the temporary workers be made at the Federal level, going along with the knowledge that there is nothing, as I see it, to prevent an alien from being admitted in order to perform another type of job that he did not fit on the prohibited list, and then once he gets into that job he begins to move about and finally finds his way back to the prohibited job? Do you have any thoughts on that?

Mr. SEARBY. Yes; once again, one of the key reasons why this should be enacted as an entire package is that if, in fact, he found himself in a prohibited job, both he and the employer—if the employer was knowledgeable—would be in violation of the employer sanctions. And those laws, those laws would be more rigorously enforced, the fair labor standards laws would be more rigorously enforced. We are asking for stricter enforcement of laws than we have and of the new system, also.

The employer sanctions have to work. That is the answer to it. Employer sanctions must work in order to control the situation that you have just projected.

Senator SIMPSON. In this subcommittee we never use the phrase "that is the answer to that." Ever, ever.

FAMILIES OF WORKERS

Well, I thank you for your comments. I have a couple more questions for Mr. Nelson. Under this proposal—and I get back to this vexing thing for me—the workers will not be allowed to bring their families under the proposal. However, under the H-2 program, families can enter, even though in actuality the employer often just simply hires select single males. What is the rationale for this policy change? I would be interested in that. And how will that be enforced and what will be the impact on it, because the person applying for the temporary worker program will say, good heavens, I can do better if I come in illegally.

Mr. NELSON. Certainly, Mr. Chairman, as you have indicated, there are a lot of difficult balancing factors that have to go into place here. The thrust of the temporary worker program, as set forth here, was to emphasize that it is temporary in that the worker is here for the maximum of a 12-month period.

His roots should remain in Mexico. He should understand that he will be returning there. Under the program he would have the right to return there for visits freely. If the families come in, I think we have the more permanent aspects again that are one of the concerns that we have in the current illegal problem. To the extent that other family members are here, they either will be pressed to work to support themselves or not be a drain on the public welfare rolls whatsoever.

So the policy balance—seeing that as long as we are emphasizing this as a temporary worker program, it is voluntary and for a limited time with right to return. It is much better to leave it without the families, also. Further, we think that has been one of the problems with the European program where it has become permanent because the families have migrated and the people have remained.

ILLEGAL IMMIGRANTS

Senator SIMPSON. It is obvious, I think, that there are many more Mexicans desiring jobs in the United States than will ever be accommodated under a 50,000 ceiling. What will preclude those who are attracted by the publicity of the program, and let me tell you one thing we have learned that when the United States makes a change or makes no change in immigration or refugee policies it is quickly known throughout the world. That is a message system that would outrank anything that is in the annals of electronic communication.

What will preclude those who are attracted by the publicity of the program and who cannot obtain visas from going ahead and entering the United States illegally? Isn't it possible that such a program might actually increase attempts to enter the United States illegally?

Mr. NELSON. I might just answer that, Mr. Chairman, with a comment on your fact that the message will be given very loud and clear to the world. That is why we think it is so important for the Congress to act on a comprehensive package so that we can, in fact, send a message to the world as to a very comprehensive and balanced program. That is very essential.

In more specific response to your question, of course, again we have the backdrop where we currently have a tremendous illegal immigration. That is an existing fact. So we have to deal with that and make efforts to turn that one around.

As has been indicated I think by all of us, the employer sanctions should be very important to start turning that illegal immigration back.

I know you mentioned in your earlier remarks that it has been a contention that maybe the bracero program and others have brought in additional illegal immigrants, but we did not have the sanctions aspect at that time. I think with the legalization approach and with this temporary worker approach that in connection also with the H-2 program, that there are several elements that will allow substantial legal migration, as well as, of course, our overall immigration quotas.

So while a lot still might want to come in, we have the vehicle for substantial legal migration under these various aspects, and tougher enforcement approaches as to the illegal aliens. And we think that that is our best and only hope to stem the tide.

ACQUISITION OF EQUITIES TOWARD RESIDENCY

Senator SIMPSON. Let me ask one other thing, then. Does the administration's program envision for the temporary worker to acquire any equities, as we call them, toward permanent residency?

Mr. NELSON. I think not, Mr. Chairman, and the others might want to supplement my comments. As indicated, they would not receive any of the social benefits, although I believe if they are injured on the job they would be covered by compensation. But they would not have the right to other social benefits; nor would they be able to adjust to any permanent status.

Again, to emphasize, this is a temporary program and not an entry program.

Senator SIMPSON. OK. There is a bit of a separation there between benefits monetarily and benefits toward adjustment of status, and you do not see either one of them?

Mr. NELSON. That is basically correct.

Senator SIMPSON. OK. I understand Senator Schmitt is on his way to the hearing. So just a couple more questions.

DOCUMENTING OF TEMPORARY WORKERS

I might ask Mr. Crigler what steps, if any, will the Department of State take to document that the temporary workers adhere to the time restrictions on their visa, and will that then be thrown back into the INS for processing? How do you envision that will work?

Mr. CRIGLER. Well, documenting that the worker adheres to the restrictions in his visa or to his entry will not be a responsibility of the State Department. This would be presumably a function of the INS. However, his record of adherence certainly would feed back into any subsequent application for admission, once again either as a temporary worker or as an immigrant.

If his record were good, that would be in his favor. If it were not, that would work against him.

ISSUES OF IMMIGRATION AND REFUGEE REFORM

Senator SIMPSON. Let me ask one final question, because there is such a totality to it all that is missed as people address the specific issues of immigration and refugee reform.

I have defined it as one of those little wooden toys that are indestructible that children use where this peg pops up here and you smash it, and then down the board another one pops up, and you smash that one and the one in the middle pops up, and you smash that one. That is what this game is in every sense, because you think you have solved one part of it, or are headed toward solution, then something pops up somewhere else. It is an extraordinary adventure, and you all know that, and those that are coming new into it quickly find it out.

They flee to something simplistic in immigration and refugee policy reform only to find that it can splatter all over the wall in another place. But let me say this, and this is of interest to me. I would be very interested.

The Select Commission recommended that with this 3½ to 6 million illegal aliens—and that is the figure we settled on, and I personally thought it was higher and I still do—and then, of course, the legalization process, then if we do this and this is the package that we talk about for reform, if we do this legalization, setting this date and saying that those that are here with equities will now be legalized into the United States, and we are talking about 3½ to 6 million people, who, the minute they have completed their legalization process have the ability to walk down to the courthouse and begin to put in their applications for familiar reunification just like any other citizen—and keep that carefully in mind, carefully.

With an increase in the overall numbers which the Select Commission expressed on legal immigration, it was felt that the temporary worker program could best be met by the streamlining of the H-2 program. Because this tremendous increase in people that will be coming in as citizens to the United States, if all works like it is supposed to work, and the H-2 program would then measure the impact, we would then use that and we could measure the impact of these other reforms.

Why did the administration reject that type of thinking which would have augered against the temporary worker program of any size, pilot or otherwise, at this time? Any thoughts? I am not trying to slap one toward the upper corner of the net. What is your thought on that? Was that thoroughly discussed?

Mr. NELSON. Yes. As you know, the administration task force, headed by the Attorney General, has spent a great deal of time reviewing all the Select Commission findings, adopted a great number of them, modified a number of others, and I think on balance, decided, for many of the reasons expressed earlier, that the limited number, the 50,000 on a 2-year experimental program, dealt with some elements that the H-2 did not. There was a need there.

I also understand that the H-2 for whatever reason has tended to be focused largely on the east coast on special labor needs, and maybe there were some regional factors there. I do not know if it was a factor but I would suspect that the thought is that the additional limited and experimental program is a necessary test. I know there was the other thought. I know there was the other thought by the Select Commission of let's see how legalization goes and then we will see what we should do later.

I believe the administration's thought was, well, that might delay the process. We should get on with the testing on the alternative temporary workers program, and that was the reason—all of those were the reasons why they felt they should go forward with the temporary worker program as it has been advanced.

Senator SIMPSON. Do you have any comment on that, Mr. Crigler?

HUMANENESS IN TEMPORARY WORKER PROGRAMS

Mr. CRIGLER. Yes, I do. I think there is an element of humaneness in the temporary worker program which is somewhat greater—I do not want to say it is absent from the H-2 program, but I think it is given considerably greater emphasis and importance by virtue of the fact that the worker who would come as a temporary worker is able to move from one allowed job to another allowed job, from one locality to another.

In this sense, it gives the impression that he is less indentured. He is less tied to a particular employer and to the whims of that employer. I think it is a considerable improvement in that sense.

It will, for that reason, also enjoy considerably more respectability I believe abroad, outside the United States in the world opinion, shall we say.

Senator SIMPSON. I understand that. Our definition of humaneness to the temporary worker, however he may well look at that, he or she possibly, may well look at that as yes, I will be taken care of, I will receive certain benefits, I will not be excluded, they will not exploit me anymore. But in the process of that—and we may have geographical distribution and we may have other things which are described in this country as humaneness, and to the person coming are simply rigamarole. And he will then head for the usual slot, which has worked so well for so many years, and that is the illegal entry.

That is an interesting problem with this. We talk about enforcement and increasing enforcement of our labor laws and farm labor laws and all those things, and that is all very real. So let us say we did all we could in that area, but if our family reunification procedures remain the same, each and every one of those is completely outside of the scope of any labor certification requirements.

So that is another interesting part of it. Well, I appreciate your testimony. It has been very helpful. I particularly appreciate the fine assistance and cooperation of many within your departments with the staff of the subcommittee. It has been helpful. We will dismiss this part of the panel and await the arrival of Senator Schmitt. There he is. No music, please.

Thank you so much. I really appreciate your testimony. I might address to the panel I will have some further questions and subcommittee members will have some further questions, and we will submit that in writing.

[Questions of the subcommittee and responses of Mr. Crigler follow:]

QUESTIONS OF SUBCOMMITTEE AND RESPONSES OF MR. CRIGLER

Question. To what extent are consular offices located in the states of Mexico which have the largest number of illegal immigrants coming to the United States? Will recruiters be sent to these states or will they simply advertise in urban centers? Do you believe that such a program could actually stimulate migration by persons hoping to qualify for the program who, if not recruited, might simply continue their journey to the U.S. with the help of smugglers all too ready to assist them?

Answer. What form of recruiting will be used and where it will take place are questions that can be answered only as we proceed with the program and enter into discussions with the Mexican authorities on its implementation.

Some would argue that a temporary worker program will actually increase illegal immigration. To address this concern we are calling for a mix of remedies: the administration's package calls for not only a temporary worker program but other measures as well, such as sanctions against employers of illegal entrants and legalization for some already in the United States. The administration believes that only by adopting all of the package can we hope to deal more effectively with the complex problem.

Question. What is the rationale for linking this program to Mexican nationals?

Answer. The pattern for Mexicans seeking work in United States has been established over many years. The evidence, based on extensive research, indicates that at least a majority of the illegal entrants who take employment in the United States are Mexicans. There is a need to test the conclusions of our research, however, before deciding how and whether to expand the temporary worker program. It therefore seemed that the best course was to start with a pilot program restricted to Mexicans. After the two year experience with the program, other options can be examined. Another consideration is that a Mexican program is much easier to administer, thus far less costly.

Question. Will the consular service require any additional funding or manpower to administer this program?

Answer. The Department believes that it can administer the proposed temporary worker program with present resources and does not foresee any additional money or people.

Senator SIMPSON. Senator Harrison Jack Schmitt, the man who assisted in recruiting me for the job—and I wondered why you did that——

Senator SCHMITT. So I could convince you of hw wisdom of my own proposals, Senator.

Senator SIMPSON. That wil not work, but go ahead, Jack. It is a pleasure to have you here, and I know of your great interest and your enthusiasm for seeing something done in this area, something done that is humane and realistic, and you come from an area of the United States where, indeed, you deal with realism in this area rather than white papers. That is why your testimony and your interest is very important. Please.

STATEMENT OF HON. HARRISON SCHMITT, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Mr. SCHMITT. Thank you, Mr. Chairman, and I would submit my summary statement for the record, and also ask that a paper I have prepared that was published recently be included in your record as well as a copy of the Los Companeros bill that I have introduced that comes under the other name of S. 47, United States-Mexico Good Neighbor Act, and ask that those be included in your record.

Senator SIMPSON. Without objection.

GUEST WORKER PROGRAM

Senator SCHMITT. Mr. Chairman, you and I have talked on many occasions and I have testified before your committee on related matters, and I would in summary say that although I endorse the administration's philosophical commitment to some form of a guest worker program, I have to say in all candor that a 50,000 per year for a 2-year program might as well not be there. It is insignificant compared to the problem. It will not give a valid test of the worth of such a program.

Basically, according to the estimates that I have studied, we have a guest worker program today, illegal but nevertheless there, that involves on an annual basis 1 to 2 million migratory workers moving back and forth across our borders, working in a variety of occupations, most of which—not all, but most of which—are the low-skilled, unskilled occupations that the U.S. worker no longer seeks because of the safety net, if you will, that we have placed under that worker by a variety of legislative and administrative initiatives through the past decades.

This guest worker program that exists today, illegal as it is, is basically a continuation of guest worker programs of various kinds, both legal and illegal, that have existed practically ever since there has been a boundary between the United States and Mexico. These guest worker programs have, on the positive side, benefited both countries. Very obviously, they have benefited Mexico as an outlet for their unemployed, but also as a major vocational training program which, through the years, has informally created a higher skill level within their own population.

BENEFITS OF GUEST WORKERS PROGRAM

The Mexican mining industry, the Mexican railroad industry, the Mexican agriculture industry, in particular just to name three, have benefited through most of the last 100 years from this ability to move back and forth across the border and pick up the skills necessary for the advancement of their own economy.

In addition, the U.S. economy has benefited because at every point in our history, we have found a labor shortage in those low-skilled areas that the Mexican migrant has been willing to fill. It has been obvious in the mining industry in previous decades. It is now obvious in the agricultural industry. It is getting to be increasingly a question in some of the low-skilled manufacturing industries in this country. That I think, is a special part of this problem which we must address in special ways.

OFF-TRANSIT EMPLOYMENT SITES

The bill I have introduced addresses it partially, and I will not claim completely in that, specific employment sites could be declared off limits to temporary visa holders, legal guest workers, if it could be shown to the Attorney General acting in consultation with other Cabinet officials that U.S. workers were ready, willing and able to fill those positions.

Mr. Chairman, that is basically it. I think that clearly, there is an economic benefit to a broad-scale guest worker program. There is a legal benefit in that it becomes something that is enforceable, in contrast to the administration's program of increased border enforcement and employer sanctions, which I have testified previously I think are unenforceable, and will greatly increase the cost of border patrol activities.

HUMANENESS

And then finally, a guest worker program, a legal guest worker program, represents a humane solution, a temporary solution, to this problem because it removes the incentives of the smugglers. These inhuman men and women on both sides of the borders who profit by trafficking in human beings.

I find that abhorrent. I think most people do, but I see no way that we are going to reduce or eliminate that traffic unless we come up with some legal means by which the workers who, because of some economic crisis in their family, decide to go north or feel they need to go north and have to go north in order to solve that particular crisis.

Thank you, Mr. Chairman.

Senator SIMPSON. Well, I do thank you, Jack. You have been very helpful and interested throughout. I know you used this figure, as we have discussed this privately and publicly, that the 50,000—you know, if that is all it is—is tokenism of the worst kind, and it will not work.

Senator SCHMITT. As we used to say in my previous profession as an astronaut and a communicator in space, that 50,000 guest workers are lost in the noise of the movement of other traffic of the actual communications that may exist across that border.

Senator SIMPSON. Awash in the asteroids.

Senator SCHMITT. Exactly.

CURTAILING ILLEGAL IMMIGRATION

Senator SIMPSON. But what is a figure that in your view would be sufficient to curtail illegal immigration successfully? And you have stated in your testimony that perhaps tens of millions are involved in coming to work illegally in and out.

Senator SCHMITT. Mr. Chairman, I have never said tens of millions. Hundreds of thousands. My own personal estimate is that the number of migrant workers on an annual basis in the last few years has been between 1 and 2 million.

Now, the bill that I have introduced has inherent within it the process to determine just what that number is. We do not know. So long as work in this country bv Mexicans is illegal, we are not going to be able to find out what that number is. The purpose of S. 47 is to provide an iterative process where, in consultation with other Secretaries, Secretary of Labor, Secretary of Agriculture in particular, the Attorney General would determine what is a preliminary number, and then continue to iterate that so we find out what is a realistic number. We just do not know.

But I give you the benefit of my own estimate, for whatever it is worth, that that number will end up somewhere between 1 and 2 million people.

MEXICAN IMMIGRANTS

Senator SIMPSON. So that we both have the record clear, in your statement that most of the tens of millions of Mexican immigrants who, at some time have entered the United States—and I assume that means throughout our history?

Senator SCHMITT. Yes, that is an historical number. When you look back into the days of World War II, when Mexican labor came into this country to fill the jobs that had been vacated by the members of our Armed Forces, when you look at the bracero program, when you look at the general legal and illegal migration through the last 100 years, clearly we are talking about tens of millions of Mexicans over that period of time.

Senator **Simpson**. Just one question and then I am going to defer to Senator Grassley, and he will conclude the morning activity. I have another engagement, and then we will take up again, of course, at 12:30.

IMMIGRATION PROBLEMS

But this bill which calls for a temporary worker program with Mexico puts me in a quandary because evidence compiled by the Census Bureau indicates that no more than 60 percent of the illegal population in the United States is from Mexico. I wonder how we are going to get an agreement limited to Mexico effectively, and how that effectively addresses the true dimensions of illegal immigration in the United States.

Senator **Schmitt**. Mr. Chairman, it does not. But what it does do is start the process. And it also separates clearly what I consider the three major facets of our immigration problem.

First there is the political refugee, those that are most clearly in the modern times shown by the Cuban and Vietnamese migrations. It separates the second element, which is that of residents, people who are here, who have established an illegal residence in the United States that are not migratory, however they got here; some because they originally came for economic reasons, some because they originally came for political reasons, but they are nevertheless illegal. That must be addressed.

What S. 47 does address is the third element of our immigration problem, and that is the migratory worker. That worker that does, in fact, move back and forth across our borders. Most of that migration does occur across the 2,000-mile southern border of the United States with Mexico. And most of those migrants are, in fact, Mexican nationals.

Not all, however. Increasingly, we are starting to see some El Salvadorans, we are starting to see some Guatemalans, we have seen others in that stream, and that is another one of the complicating facets of this problem. But when you deal just with the migratory labor problem, we are dealing largely with a Mexican migratory labor problem.

Senator **Simpson**. Thank you very much, Jack.

Senator **Grassley**. Before you go, Mr. Chairman, I have four or five questions I want to submit in writing to that first panel.

Senator **Simpson**. I cleared the record for that purpose and you may submit those and they will respond. And Senator Grassley, who is a member of the subcommittee and has taken a very active interest in this area, will conclude the morning proceedings—I certainly appreciate that—after Senator Schmitt has testified.

Thank you, and thank you, Jack, very much.

Senator **Schmitt**. Thank you.

ISSUANCE OF TEMPORARY WORKERS VISAS

Senator **Grassley** [presiding]. My colleague, I would like to ask you three or four questions. I make reference to Senator Hayakawa's bill because it calls for the issuance of a million temporary worker visas each year for 5 years.

Does your bill address the question of how many visas should be issued, or will that be left up to the Attorney General, if your bill were passed?

Senator **SCHMITT**. It addresses it in that it encourages and really mandates an iterative process that the Attorney General, working with the Departments of Labor and Agriculture and State, as well as cooperating with industry and State governments, determine an initial figure for temporary visas, and then update that figure as both demand and the identification of the migratory labor stream is further iterated.

I see no way to pick a number. As I told the Chairman before you arrived, my personal estimate is that the annual migratory figure is somewhere between 1 and 2 million. But that is an estimate based only on a gut feeling of studying a lot of figures about interdiction, figures from research done in Mexico as well as here.

I see no way, frankly, that we can determine a figure without working the problem for a while. The reason being that no one will admit they are in the United States illegally.

REPORT CRITICISMS

Senator **GRASSLEY**. Would you respond to the following criticisms raised by the Select Commission staff report against your proposal.

No. 1, the INS personnel shortage is such that the administration of the program would be virtually impossible. No. 2, since the program only covers Mexican workers, there would be nothing to preclude unfair competition from other illegal aliens. And third, issuing the visas in Mexico might contribute to the formation of a new migrant stream. This may lead to a pattern of illegal entry by unsuccessful visa applicants, along with these new people coming in causing additional problems for the INS.

ILLEGAL ENTRY OF UNSUCCESSFUL VISA APPLICANTS

Senator **SCHMITT**. With respect to the third of those, I think that was one of the major benefits that we have from our interaction with the Select Commission in that if the visas—and we had discomfort with this when we put it in the bill—if the visas are issued at the Consular level in Mexico they would be subject to a number of different abuses potentially in Mexico. They would be subject to a number of possible distortions of the normal migratory streams.

As a consequence of that, we are considering modification of that so that the visas themselves are issued where those streams do intercept our border now. So that the control of the visa issuance would be entirely within this country, as I think would be preferred by Mexico, since they prefer not to admit that they have a problem, and I can understand that. And second, so that it would not distort the migratory stream. So I think that was an excellent criticism. It did force us to go back and think about that problem, and I think there is a solution to that that does not negate the value of the program.

PROGRAM ADMINISTRATION

The first question about INS personnel, Senator Grassley, actually recognizing reality of the migration of guest workers is going to reduce the demands on INS personnel. What is going to increase the demands on INS personnel is exactly what the Select Commission has recommended to you, and that is stricter border enforcement, stricter prosecution of those that do get across the border and try to find employment here, and employer sanctions. If anything, it is going to increase the demands on the INS. It is going to be the proposals of the Select Commission, not recognizing reality and allowing that migratory stream to work its way back and forth across the border as seasonal labor demands in this country warrant.

Now finally, I taked to Senator Simpson a little bit about the various immigration problems and do not claim that this will address all of them. It addresses merely the migratory flow across the Mexican border. We are going to have to use other means, such as some of those proposed by the administration, to reduce the flow of illegal aliens by other means. And I think we can control that.

Most of the workers crossing the Mexican border in a temporary way are Mexicans; not all. They are almost entirely Latin Americans, and there will be some difficulty deciding how to handle that. I think that you basically have to assume that those crossing that border up to the quota of the jobs that are available will be mostly Mexicans, and that that can be handled appropriately.

MIGRATORY WORKERS

You have to realize that in the current guest worker program which is illegal and which, in my opinion, would not change under a legal guest worker program, the grapevine is very good. The migratory worker does not stay in this country, does not come or does not stay if there are not jobs. There are no unemployed migratory workers.

Now some leak off of that stream and try to stay here permanently. That is obvious. But the vast majority of these migratory workers are, in fact, truly migrants and they move back and forth, their families are in Mexico, they are Mexicans by nationality and by pride and by orientation. And that would not be changed one iota by legalizing that particular guest worker flow.

MAGNITUDE OF PROBLEM

Senator GRASSLEY. Thank you. I have one more. Right now about half of the Mexican population is under 15 years of age. There is some indication that, as you indicated, the Mexican Government is not going to be able to address the widespread problems of unemployment and under employment until more wealth comes to the country, and I suppose that oil is a major hope for that country.

Given these facts, and coupled with it the fact that a Mexican worker comes to this country and can earn three to four times what they can earn in his own country, what is the incentive for illegals to take only temporary jobs in the United States and then to return home after a short period of time? In other words, are we really being realistic in this whole thing, considering the magnitude of the problem?

Senator SCHMITT. I believe we are because, again, the studies, modern studies, have convinced me and I think have been very well done by Cornelius, Bustamante, and many others, that the Mexican migratory worker is a Mexican. They love Mexico, they are nationalistic, their families' roots are Mexico, and there is a tremendous pull back once the temporary economic crisis has been met.

Now, not everyone—that does not apply in the specific but it certainly applies in the general, based on everything we know today. We have to count on Mexicans being just as nationalistic, if not more so maybe, than Americans, and do wish to remain identified with Mexico.

NATIONALISM

Senator GRASSLEY. Your response is that that nationalistic pull is stronger than the economics of earning three to four times——

Senator SCHMITT. Over the long haul it is. The studies of Cornelius in particular—and these were done in Mexico as well as in this country—indicate that the average number of trips that a migrant will make, once they have decided to go north, is about three, I believe, no more than that in a lifetime.

Again, the average stay is less than 6 months in this country. Truly seasonal, truly migratory and related to specific economic crises that come up in the families.

Now you, however, raise a tremendously important point. That is that the guest worker program, legal guest worker program, can only be viewed as a short-term treatment of an extremely long-term problem, and it is up to the United States to assist Mexico in every way that we can to see that the employment opportunities are rapidly increased in Mexico itself. It is the only way in which the total problem that Mexico faces is going to be solved.

But we have to recognize that those very statistics you state of 50 percent of the population being 15 years or younger are the reason why the problem of migratory labor is not going to go away. And making work in this country totally illegal and trying to close off a border will only mean that we will have greater conflict with Mexico. We will impose even greater inhuman sacrifices on people who are coming north solely to find temporary economic relief from problems that they face in their families, and that flow will continue.

If we try employer sanctions, as I indicated in testimony before this committee a few weeks ago, we then will—if we are successful, we will drive tens of thousands of American farmers and businessmen out of business because they are dependent not on low-cost labor but on the availability of labor, and that labor is not available in this country under our present social structure.

NATIONAL ALLEGIANCE OF MIGRANT WORKERS

Senator GRASSLEY. The study you mentioned that talks about nationalism or national allegiance of the migrant worker obviously is important, but that was based on a study of the people who actually returned. A sample of the returnees. Now, I do not know what percentage that might be, but, you know, that could leave out a large number of people who stayed in this country and who obviously stayed here because of the economic pull, as opposed to the national pull.

Senator SCHMITT. Yes; that is true, but other studies and related through these, Cornelius and others, indicated that when you studied the actual flow as it crosses the border, and where you can work with the people in this country who are here temporarily, you find the same kind of evidence. They are single people; whether male or female they are single, and their family roots are still in Mexico. And although as I have admitted and I think everyone must acknowledge, there is leakage out of those streams, there is no question about that and we have to solve that problem of what do we do with an illegal alien, whether Mexican or anyone else, who has established roots in this country, who has at least children that are protected by our Constitution as they are. Once they cross the border, once they get within a 12-mile limit, they are protected by our Constitution just like everyone else. That is one of the great benefits of being in this country and that is why we have 14 million political refugees out there in the world, all of whom would love to get to the United States.

We ought to feel good about that even though it does create some tremendous problems. That problem of residency in this country by illegal aliens is one we must solve, but I do not think we should turn our back on solving the migratory labor problem just because we have not yet figured out how to solve that one.

Senator GRASSLEY. I thank you very much for your patience. I do not have anymore questions. Thank you for answering our questions and for your fine testimony.

The committee recesses now until 12:30.

[Whereupon, at 11:30 a.m., the committee recessed for lunch, to reconvene at 12:30 p.m., the same day.]

[Prepared statement of Senator Schmitt, report, and S. 47 follow:]

Statement of Senator Harrison Schmitt

Mr. Chairman and Members of the Subcommittee, it is always a pleasure to appear before this Subcommittee, but I particularly welcome the opportunity to testify this morning because I firmly believe that the key to resolving our immigration crisis lies in implementing a realistic program for undocumented workers from Mexico. Mr. Chairman, I intend to keep my statement short so that I may respond to questions, but I would like to ask that an article I have written which describes in detail my views of illegal migration be included as part of the Record of this hearing.

I am pleased that the Administration intends to seek legislation which would establish a temporary guest worker program for Mexican citizens. In many respects, the Ad--ministration's proposals parallel S.47, the United States-Mexico Good Neighbor Act, which I introduced in January of this year. Both would authorize Mexican workers to obtain temporary visas to enter this country and seek employment at any worksite, unless the Department of Labor certified that there was sufficient American labor available. Further, both proposals would free Mexican workers from the restrictions of working for a specific employer and would extend to them the benefits of all of our labor laws.

However, the Administration's plan differs from mine in two crucial areas. First, the Administration places an arbitrary ceiling of 50,000 Mexican workers who could participate in the guest worker program per year. Second, the program, under the Administration's plan, is experimental and would end after two years. I strongly object to these features because I believe that a program lasting only two years with 100,000 participants would not provide Con-

GRESS WITH SUFFICIENT INFORMATION TO DETERMINE WHETHER A GUEST WORKER PROGRAM WOULD BE A REASONABLE SOLUTION TO THE PROBLEM OF UNDOCUMENTED WORKERS FROM MEXICO.

ACCORDING TO RECENT STUDIES, MOST OF THE 10'S OF MILLIONS OF MEXICAN MIGRANTS WHO AT SOME TIME HAVE ENTERED THE UNITED STATES DID SO TO FIND TEMPORARY WORK, NOT TO BECOME PERMANENT RESIDENTS. AS SOON AS THEIR PERSONAL ECONOMIC CRISIS DISAPPEARED, THEY RETURNED HOME. THE JOBS PERFORMED BY THESE MIGRANTS ARE SEASONAL AND UNSKILLED; JOBS THAT ARE VITAL TO OUR ECONOMY; JOBS AMERICANS WILL NOT TAKE.

SETTING AN ARBITRARILY LOW LIMIT ON THE NUMBER OF MEXICANS WHO CAN OBTAIN VISAS TO WORK HERE LEGALLY WILL NOT CHANGE THIS PHENOMENON. A GUEST WORKER PROGRAM, TO SUCCEED, MUST BEAR A DIRECT RELATIONSHIP TO THE NUMBER OF JOBS AVAILABLE - A FIGURE THAT WILL CHANGE EACH YEAR BUT WILL SURELY EXCEED 50,000. UNDER THE ADMINISTRATION'S PLAN, THE GUEST WORKER PROGRAM WOULD BE SUCCESSFUL ONLY FOR THE 50,000 APPLICANTS WHO ARE ADMITTED; IT WILL NOT DISCOURAGE LARGE NUMBERS OF OTHER MEXICAN MIGRANTS FROM CONTINUING TO CROSS OUR BORDERS ILLEGALLY.

EMPLOYING MEXICAN WORKERS IN THE UNITED STATES NOT ONLY CONTRIBUTES TO THE STRENGTH OF THE MEXICAN ECONOMY, BUT ALSO DIFFUSES POLITICAL AND SOCIAL PROBLEMS CAUSED BY WIDESPREAD MEXICAN UNEMPLOYMENT. IN MARCH, PRESIDENT REAGAN RECOGNIZED THE IMPORTANCE OF MAINTAINING A FREE FLOW OF LABOR BETWEEN OUR COUNTRY AND MEXICO WHEN HE NOTED THAT SEASONAL AND TEMPORARY MIGRATION ACTS AS A "SAFETY VALVE" TO EASE THE PRESSURES IN MEXICO AND WOULD ADVERSELY AFFECT THE STABILITY OF MEXICO IF ARBITRARILY SHUT OFF. UNFORTUNATELY, THE TWO YEAR SUNSET PROVISION CONTAINED IN THE ADMINISTRATION'S PROPOSAL, COMBINED WITH STEPPED UP BORDER ENFORCEMENT AND

EMPLOYER SANCTIONS, COULD LEAD TO A SOCIAL UPHEAVAL IN MEXICO THAT COULD DESTABALIZE OUR SOUTHERN BORDERS. I BELIEVE THAT LEGISLATION ESTABLISHING A GUEST WORKER PROGRAM MUST INCLUDE A SUNSET PROVISION WHICH GIVES MEXICO SUFFICIENT TIME TO RESPOND TO OUR TIGHTENED IMMIGRATION POLICY BY STIMULATING ITS ECONOMY AND INCREASING THE NUMBER OF JOBS FOR ITS GROWING POPULATION. TO DO LESS WOULD THREATEN OUR RELATIONS WITH MEXICO.

MR. CHAIRMAN, I HOPE THAT THIS SUBCOMMITTEE WILL CAREFULLY CONSIDER THE REALITIES OF MEXICAN MIGRATION, AS WELL AS OUR OWN ECONOMIC CONDITIONS, BEFORE ADOPTING A PROPOSAL WHICH INCLUDES A GUEST WORKER PROGRAM FOR JUST 50,000 MEXICANS AND LASTING ONLY TWO YEARS. A TEMPORARY GUEST WORKER PROGRAM IS A VIABLE SOLUTION TO OUR IMMIGRATION PROBLEMS, BUT IT MUST BE REALISTIC TO WORK. IF IT IS NOT, WE WILL HAVE SPENT A GREAT DEAL OF MONEY FOR NOTHING.

MR. CHAIRMAN, THAT CONCLUDES MY STATEMENT. I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS THAT YOU MIGHT HAVE.

LOS COMPANEROS: A RATIONAL MEXICAN MIGRATION POLICY

INTRODUCTION

The problem of illegal migrant labor from Mexico is a problem with an obvious solution. The proposals advanced by the previous Administration for vastly increased border restrictions are unaffordable; unworkable proposals for employer sanctions are inherently discriminatory and proposals for some vague amnesty are worse than nothing. Clearly the designers of these proposals were completely unfamiliar with the facts of Mexican worker migration.

Unfortunately, some Americans see the Mexican migrant as a threat to the American worker, the American economy and the American way of life. According to their view, Mexican aliens are entering the country in ever-increasing numbers; thus, taking jobs from American workers, draining the welfare system and disrupting American life by refusing to adopt American ways. Accordingly, we should respond to this threat by sealing the border and punishing employers who hire such illegal aliens.

This view does not square with the new facts developed by modern research.1/ According to all recent factual

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1/See the following studies: W. Cornelius, Mexican Migration to the United States: Causes, Consequences and U.S. Responses (1978) [hereinafter cited as Cornelius]; Bustamante, Undocumented Immigration from Mexico: Research Report, II International Migration Review 149-177 (1978); Dagodag, Source Regions and Composition of Illegal Mexican Immigration to California, 9 International Migration Review 499-511 (1976); Dinerman, Patterns of Adaptation among Households of U.S.-bound Migrants from Michoacan, Mexico (Paper presented at the Joint National Meeting of the Latin American Studies Association and the African Studies Association, Houston, Texas, November 1977); Exter, Rural Community Structure and Migration: A Comparative Analysis of Acatic and Acatlan de Juarez in Jalisco, Mexico, Latin American Studies Program Dissertation Series, No. 71 (1976); Mines, Las Animas: A Village of Migrants (Unpublished paper, Department of Agriculture and Resource Economics, University of California, Berkeley, 1977); Mines, The Workers of Las Animas: A Case Study of Village Migration to California (Unpublished research essay, Department of Agriculture and Resource studies, Mexican migrant workers add productivity and jobs to the American economy, work largely in low-skilled jobs only they will take and pay far more in taxes than they receive in social services. Having no real desire to become Americans, they do not adopt American ways because they think of themselves as Mexicans. The vast majority return home regularly and permanently after earning enough money to meet the economic crisis which brought them North.

It is also well-established that many American employers need low-skilled seasonal labor. They meet this need by hiring illegal aliens, most of whom are Mexican migrants. Many marginal small businesses and farms are kept from unnecessary bankruptcy by the availability of these willing workers.

We can meet the needs of both Americans and Mexicans and continue to reap the benefits of their efforts by legalizing work which is presently illegal but unenforceably so. A realistic program of temporary visas for Mexican workers is the only feasible economic answer and the only moral human answer. A program of eight months based on the number of available jobs and with responsible safeguards for American workers, can work to the benefit of good relationships between Mexico and the United States. By addressing the issue of economic migration in a reasonable and bilateral manner, we can strengthen our political and economic ties with Mexico and help both our neighbor and ourselves at the

1/ Continued

Economics, University of California, Berkeley, 1978); D. North and M. Houstoun, *The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study* (1976); Orange County Task Force on Medical Care for Illegal Aliens, *The Economic Impact of Undocumented Immigrants on Public Health Services in Orange County (Calif.)* (Final Report presented to the Orange Country Board of Supervisors, March 1978); M. Villalpando, et al., *A Study of the Socioeconomic Impact of Illegal Aliens on San Diego County* (1977); Zarrugh, *Gente de mi tierra: Mexican Village Migrants in a California Community* (Ph.D. dissertation, University of California, Berkley, 1974).

same time. This is the essence of "Los Compañeros". Compañero is the Spanish word for companion, friend, equal. The Los Compañeros bill, S.1427, is entitled the "United States-Mexico Good Neighbor Act".

CURRENT U.S. - MEXICAN RELATIONS

Mexico and the United States share a 1,960 mile border including 180 miles which borders my state, New Mexico. Proximity and history have resulted in an often unrecognized, yet substantial and natural economic and cultural interdependence between our two countries and their adjoining states. The examination of the migrant Mexican labor issue must be viewed against the background of other issues affecting United States-Mexico relations.

The United States has an enormous and long-standing economic presence in Mexico. According to Richard Fagen, a Professor of Political Science at Stanford University and a former President of the Latin American Studies Association:

> The United States is the primary source of direct foreign investment (in Mexico)...by the end of 1976, U.S. private banks were carrying the impressive total of $11.5 billion in outstanding loans and credits to Mexico, an increase of $2.5 billion over the previous year's figure.2/

The United States currently supplies more than 60 percent of Mexico's imports which is balanced by a strong Mexican presence in the U.S. economy. Mexico is our leading trading partner in Latin America, and our fifth largest in the world.3/ With the continuing exports of Mexican oil and gas, Mexico will become even more important to the United States as a trading partner. The desirability and mutual

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2/Fagen, *The Realities of U.S.-Mexican Relations*, 54 Foreign Affairs 686 (1977) [hereinafter cited as Fagen].

3/Lucey, *The United States and Mexico*, Vital Speeches, February 1, 1979 at 235 [hereinafter cited as Lucey].

benefit of having a close-by source of imported energy for the United States and a close-by export market for Mexico is obvious to all.

This interdependence extends to many other areas with both international and domestic impact. Manufacturing, agriculture, land and water use, law enforcement and, of course, labor. For this reason, it serves our interests to preserve and strengthen Mexico as a nation and our good relations with that nation. These interests have been compared by Lucey with our interests in a strong Europe after World War II:

> We felt that it was in our long-term interest to see a Europe strong enough and united enough to negotiate on equal terms with the United States. We were, and perhaps still are, the strongest supporters of European unity. For the same reasons, the United States will benefit from a Mexican neighbor strong enough and confident enough to negotiate with us on terms that are perceived by both parties to be equal. It has not been and never will be in our interest to have a Mexico that is other than a full partner in the joint undertakings that close neighbors must constantly pursue. It will be in the distinct interest of both our countries if Mexico experiences healthy economic growth, develops jobs and opportunities for her poorest citizens, and approaches economic equality with the United States.4/

Our historic and even our recent dealings with Mexico show an irrational insensitivity to the importance of dealing fairly and equally with this vital neighbor. The recent natural gas negotiations epitomize our short-sighted approach.5/ Six U.S. natural gas distributors negotiated with PEMEX, the government-owned Mexican petroleum company, to buy natural gas. Under present law,6/ the Secretary of Energy must approve the final terms. Then Secretary of Energy, James Schlesinger, rejected the price asked by Mexico (which was the going price in the world market) as being too high,

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4/Id.
5/P. Ehrlich, L. Bilderback and A. Ehrlich, The Golden Door, 171 (1979) [hereinafter cited as Ehrlich].
6/15 U.S.C. 717b.

reasoning that the gas could be piped to the U.S. more cheaply than it could be shipped from other overseas areas; thus, Mexico could afford to lower its price for the U.S. market. This argument ignored the fact that there are always competitors for scarce commodities, in this case the Japanese. Instead of pursuing this line quietly, Schlesinger publicly stated that Mexico "has to sell us the gas sooner or later."7/ Mexico finally agreed to sell the U.S. some far higher price. This agreement was reached only under the pressure of a Presidential visit to Mexico.

In another energy-related incident, while asking Mexico to hold the line on oil price increases, the U.S. Government accepted a bid from Phillips Petroleum to purchase oil from the Elk Hills Naval Petroleum Reserve at a price of $41 per barrel - above the going world price. This demonstrated a clear hypocrisy in our dealings with Mexico. Naturally, the Mexican government responded appropriately by raising the price of oil to us.8/

Thus, to solve the vexing problems between us, we must develop a coherent policy focusing on all aspects of our relationship with Mexico, including energy, trade, labor, cultural exchange and foreign policy. Our present course, if maintained, bodes ill in this respect. Although this discussion focuses on the migrant labor issue, its resolution must be viewed in the context of all other major issues.

HISTORICAL DEVELOPMENT

The current American economic presence in Mexico results from decades of American involvement in Mexico's affairs. In the 1840's our westward expansion led to a war with Mexico (1846-1848) that resulted in the transfer to the United States most of California, Arizona and New Mexico.

7/Ehrlich, note 5 supra.
8/New York Times, February 25, 1980 at 1.

Prior to that, Texas had successfully revolted from Mexican rule and became an independent nation, eventually joining the Union in 1845. In 1853 we negotiated the Gadsden Purchase, which essentially established the border at its present location.

Our own Civil War kept us out of Mexico during the turbulent years of Maximilian and Juarez; but when the dust settled in 1876 under Porfirio Diaz, expanding U.S. business interests moved into the Mexican economy. During the Diaz regime (which lasted until 1911), American and other foreign companies controlled Mexico's petroleum and mining industries with the approval of the Diaz government.

This time of relative tranquility came to an end when the Mexican revolution (1910-1920) broke out over the issues of land reform and a control of their economic destiny. A decade of turmoil followed, causing untold suffering for millions of Mexicans which was graphically described by population biologist Paul Ehrlich:

> Untold thousands were killed in the fighting or simply as innocent bystanders. Toward the end of the decade, the worldwide influenza epidemic of 1918-1919 took its toll. Many thousands of additional Mexicans fled across the border to the United States, and many of them stayed there permanently. Although demographic records are far from complete, it appears that altogether Mexico's population (in 1910 about 15 million) declined by a million during the decade.[9]

During the revolution the U.S. first supported one side and then another, following no consistent policy. The low point of U.S.-Mexican relations in this century came in April, 1914 when the U.S. Navy occupied the port of Veracruz at the cost of 300 Mexican lives.

American employers have always welcomed Mexican labor. In the 1880's, Mexican workers took the place of excluded Chinese coolies in railroad and agricultural work. During the decade of the Revolution, Mexicans entered the U.S. as "economic refugees" fleeing the conditions which made it impossible for them to live at home.

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[9] Ehrlich at 135.

In the 1920's the U.S. imposed restrictions on Mexican immigration for the first time, establishing the Border Patrol in 1924,10/ requiring visas and enforcing the head tax and literacy requirements by 1930.11/ The Great Depression slowed migration to the United States as jobs north of the border became scarce. In the early years of the Depression, we sent back to Mexico many Mexicans who had entered legally before 1928 because they had no documents. Our policy towards Mexico and other Latin American nations became more important under President Roosevelt's Good Neighbor Policy.12/ This policy represented the first real effort to develop a coordinated policy for relations between our two countries. The cooperation which this policy began resulted in the development of the Bracero program in 1942.13/

The controversial Bracero program attempted to use Mexican labor to fill wartime labor shortages in U.S. agriculture. American farmers had used Mexican workers under various contract labor programs during the first World War14/ and because of several farmworker shortages in World War II, it was decided to reinstitute this approach. The

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10/Act of May 26, 1924, 43 Stat. 153.

11/*Illegal Aliens: Analysis and Background*, Committee Print, House Judiciary Committee.

12/Scruggs, Otey M., Evolution of the Mexican Farm Labor Agreement of 1942. Agricultural History, v. 34, July 1960; pp. 141-142.

13/The Bracero program stretched from 1942-1964 in three distinct-phases. The "war-time phase" (1942-1947) was initially created by executive agreement and then by statute (57 Stat. 70 [1943]). The program continued in the so-called "transition" phase (1948-1951) under frequently revised agreements and finally the "Public Law 78" phase (1951-1964).

14/Congressional Research Service, Library of Congress, *Temporary Worker Programs: Background and Issues*, 6-15 (1980) [hereinafter cited as *Temporary Workers*].

Bracero program began in 1942 with an international agreement[15] and continued for 22 years under various statutory provisions. The program, under both provisions, allowed American farmers to contract for the use of Mexican workers on their farms. It ostensibly required them to offer no less than the prevailing wage rate, as well as to house and feed the workers. Due to lax enforcement in practice, the workers did not always receive all of the protections envisioned.

The Bracero program did not totally eliminate illegal migration from Mexico; although, even when adjusted for population growth, the problem then was not as substantial as today's estimates indicate. Border patrol and Immigration and Naturalization Service (INS) apprehensions averaged 230,740 from 1942-1964.[16] Some say the program stimulated illegal entry since more Mexicans wanted to come to the United States than the Bracero program had room for. Some growers preferred to use illegal labor to avoid the requirements of the Bracero program. By greatly expanding the program and increasing enforcement, the U.S. diverted much of the illegal flow to legal channels.[17] At its peak in 1956, the Bracero program admitted 445,197 workers.[18] This followed the largest enforcement effort, Operation Wetback, in 1954. This sweeping roundup of Mexican workers resulted in the expulsion of over one million people[19], including many legal residents and even citizens of the United States.

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[15] Agreement with Mexico respecting the temporary migration of Mexican agricultural workers, July 23, 1942, 56 Stat. 1759, E.A.S. 278.

[16] Temporary Workers, 37.

[17] *Id.* at 27.

[18] *Id.* at 36.

[19] Bustamante, *supra*, 150.

American organized labor has consistently opposed all temporary worker programs. The Bracero program was opposed from the beginning because it secured on paper benefits for Mexican workers which American workers had not achieved:

> Not only were the Mexicans guaranteed room, board and a decent wage, they were also granted various fringe benefits that the native farmworker had not been able to achieve in a century of struggle. Included among these benefits were medical care, social security, free transportation and subsistence en route, tools and equipment, minimum working standards and a guaranteed amount of work time.[20]

This opposition became stronger in the 1960's and resulted in the end of the Bracero program in 1964 when the legislation authorizing the importation of labor expired. However, American farmers (as well as other employers) have continued to use Mexican workers without the legal framework of a Bracero program, defending these actions as an economic necessity.

Organized Labor's objections to foreign migrant workers stem from the belief that employment of these workers had highly adverse effects on employment opportunities, wages and working conditions for American workers. Numerous modern studies[21] demonstrate that this is not generally true, but Labor's traditional opposition continues.[22] Migrant workers do not cause widespread unemployment of American workers, instead they, for the most part, take lowskill jobs in marginal businesses which are not attractive to American workers, most of whom are protected by various unemployment benefits. The existence of this social net beneath U.S. labor is a major factor in assuring that jobs for Mexican migrants will always be available in this country. Without foreign workers, most of the businesses who employ the migrants would fail or locate in other countries with available labor.

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[20] R. Craig, *The Bracero Program: Interest Groups and Foreign Policy*.

[21] *See*, *e.g.*, Cornelius, Bustamante and Mines, Note 1, *supra*.

[22] *See*, *generally*, Second Report of the Select Commission on Immigration and Refugee Policy (October, 1980).

While some Mexican workers continue to be paid less than the minimum wage in rural agricultural work, they receive the legal minimum or more in urban areas. The average hourly wage rate for illegal migrant workers is estimated to be $2.77/hour with only about 28.6 percent of the workers receiving less than the current minimum wage.23/

The prearranged contracts of the Bracero program, unfortunately, encouraged exploitation of Mexican workers. Since the end of the program, horror stories of wage and other exploitation have been drastically reduced24/ as labor shortages have become more critical than labor costs in lowskill employment categories.

In the 1960's, Congress reshaped American immigration policy scrapping the discriminatory quota system of the 1920's in favor of a nondiscriminatory system favoring family reunification.25/ In place of quotas developed from the number of immigrants already in the U.S. from a particular country, the new law set the same quota for each country.26/ In 1976, we extended this quota to Mexico allowing only 20,000 visas a year,27/ ignoring our historical immigration patterns and failing to reflect any special relationship resulting from our proximity to Mexico and the interdependence of our economies and cultures; thus, the problem of illegal migration was exacerbated by restricting the number of Mexicans who might legally immigrate.

23/See Cornelius, at 64.
24/See Cornelius at 52-71.
25/Illegal Aliens at 40.
26/Act of October 3, 1965, Public Law 89-236, 79 Stat. 911.
27/Act of October 20, 1976, Public Law 94-571, 90 Stat. 2703.

THE CURRENT IMMIGRATION SITUATION

Because of the difficulty of measuring a largely illegal population, we cannot know many of the facts about immigration and migration from Mexico. We do know the number of Mexicans who enter the U.S. legally as permanent residents or temporary agricultural workers ("H-2" programs). Of those who become permanent residents, some receive visas under the 20,000 quota and others enter under relative and occupational preferences. 53,400 immigrated in 1976 and 44,600 in 1977.28/

Some Mexicans enter the United States under the "H-2" temporary workers program. Section 101(a)(15)(h)(ii) of the Immigration and Naturalization Act29/ provides for the entry of temporary workers after the Department of Labor certifies that domestic workers cannot be found for particular jobs upon application of the employer. The "H-2" program resembles the Bracero program in that the workers are tied to a specific worksite; ordinarily farms. It also requires that benefits available to foreign workers also be provided to domestic workers. According to Aaron Podin, head of the Division of Labor Certification at the Department of Labor, the Department vigorously enforced its regulations, resulting in the admission of only a small number of workers which has adversely affected many employers with no other labor alternative. In fiscal year 1977, the program used only 27,760 workers, of which 977 were Mexicans. In 1978 Mexicans admitted under the "H-2" program numbered only 1,089.30/ The program currently is expanding somewhat, largely as a result of litigation between agricultural employers and the Department.31/

28/1977 Immigration and Naturalization Service Annual Report. In 1978 the figure was 92,367.

29/8 U.S.C. 1101 et. seq.

30/Temporary Workers at 59.

31/Statement of Aaron Podin before the Select Commission on Immigration and Refugee Policy, October 29, 1979.

Illegal migrants make up the largest portion of Mexican nationals in the United States. We have no reliable estimates of their numbers, but the range of recent estimates of the total number of illegal aliens in this country range between 2-12 million. Most researchers agree that the actual number is closer to 2 million than to 12, of whom about two-thirds to three-quarters are Mexicans.32/ Many of these estimates use the number of apprehensions by the INS as a base. The INS apprehended 792,600 Mexicans in 1977, 841,300 in 1978 and 1,069,400 in 1979.33/ These figures include many repeated apprehensions of the same persons. The widely varying estimates of the illegal population based on this data also overlook or underestimate the volume of annual return migration to Mexico, which all recent studies have found to be as high as 9 out of every 10 illegal entrants.34/

As a consequence of recent studies,35/ we know more about the characteristics of the illegal Mexican migrants than about their absolute numbers. They are mostly males between 22 and 30 years of age. They are poorly educated with three or fewer years of schooling, although probably better educated than the average of their peers. A majority of the youngest migrants have completed the sixth grade. Although more than half are married when they first migrate to the U.S., fewer than one percent bring their wives and children with them.

Most Mexican migrants come to the United States as temporary wage-laborers, not permanent settlers.36/ The

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32/See Cornelius at 10.

33/1977 and 1978 Immigration and Naturalization Service Annual Reports. 1979 figure provided by the INS.

34/See Cornelius at 25.

35/See Note 1, supra.

36/The migrants enter the U.S. without inspection, crossing the border often with the aid of professional smugglers or "coyotes" who charge between $250 and $300 for their service.

most recent group studied by Dr. Wayne Cornelius37/ stayed in this country an average of only 5.5 months and came an average of less than three times in a lifetime.38/ This figure is consistent with the estimates of others who have studied the field,39/ and according to the Cornelius study, migrants come to this country to accumulate relatively small amounts of cash to meet specific needs at home. They migrate to the United States, rather than Mexican cities, because they can more easily find jobs that pay an average of $120 per week versus $10 per week they might be paid in Mexico. This is an irresistible economic pressure to "go North".

During their short stay in the U.S., Mexican workers take a variety of jobs. Naturally, a large number work in agriculture - between 40 and 50 percent according to most recent authorities.40/ Other migrants take commercial, industrial, construction and service jobs. The most recent group studied by Dr. Cornelius broke down as follows: 45 percent in agriculture, 20.8 percent in industry, 14 percent in commerce, 10.6 percent in construction and 8.6 percent in service.41/ In non-agricultural occupations, they take unskilled jobs such as janitors, garbage collectors, dishwashers or busboys. Less than 14 percent hold skilled or semi-skilled jobs.42/ According to Dr. Cornelius:

37/Dr. Cornelius interviewed adult males in nine rural communities of Jalisco, Mexico. These men were illegal migrants before 1969, illegal migrants after 1969, former Braceros, legal migrants or men who had not migrated but were potential migrants.

38/See Cornelius at 26.

39/See *e.g.*, North and Houstoun, *supra*, 86; Bustamante, *supra*, 164-165; see also Hearings on *Undocumented Workers: Implications for U.S. Policy in the Western Hemisphere*, by House Committee on International Affairs, Subcommittee on Inter-American Affairs, 95th Cong., ser. 3901, pt. 4 at 172 (statement of Alejandro Portes) [hereinafter cited as Hearings].

40/Cornelius, *supra*; North and Houstoun, *supra*; and Villalpando, *supra*.

41/See Cornelius at 54.

42/*Id.* at 55.

> (The) jobs often held by Mexican illegal aliens have several characteristics in common. They require little or no technical skill and only a rudimentary command of English, if any at all. They involve dirty, often physically arduous tasks, wages at or slightly above the legal minimum, low social status, low job security (often due to the short term or seasonal nature of the work), and little chance of advancement. In short, they are menial, dead-end jobs which are nevertheless attractive to the migrant by comparison with the alternatives in his home community.43/

Needless to say, it is likely that such jobs as these would go unfilled absent these temporary workers. Consequently, their presence in actuality increases our economic productivity. Approximately two-thirds of the migrants are also employed in Hispanic dominated businesses which are unlikely to hire more expensive and less available U.S. workers.

Mexicans migrate to the United States for two reasons: jobs in the U.S. "pull" them and bad conditions in Mexico "push" them. Some policymakers in the U.S. emphasize the push factors. The Interagency Task Force on Immigration Policy reported in 1979 that many Americans blame high Mexican birth rates and an unequal distribution of opportunity and wealth within Mexico as the primary causes of illegal migration.44/ Rather than use immigration as a safety valve for its internal problems, those Americans expect Mexico to make a commitment of purpose and capital to the solving of the social and economic problems underlying illegal migration.45/

Mexican policymakers emphasize the pull factors of wage differentials and continuing requirements for low-wage workers in the United States.46/ According to the Interagency Task Force, Mexico tends to see the illegal entry of

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43/Id. at 56.
44/Interagency Task Force on Immigration Policy, Departments of Justice, Labor and State, Staff Report, 286 (1979) [hereinafter cited as Task Force].
45/Id.
46/Hearings at 361.

their workers into the United States as a natural response to the United States' need for cheap labor. According to many Mexicans, "if their workers were not wanted and needed by American business, their workers wouldn't come to the United States in the first place".47/ Modern research tends to support the Mexican position that "pull" outweighs "push"

According to David F. Ronfeldt of the Rand Corporation and Cessar D. Sereseres of the University of California, the migrants also have a clearly beneficial economic impact on the United States:

> Recent field research indicates that the undocumented workers contribute more to the U.S. economy than they take out. Accordingly, the undocumented workers often take the lowest paying, least skilled, dirtiest jobs -- in agriculture, canneries, packing houses, restaurants, hospitals, machine shops, garment and construction industries -- while Americans prefer to collect unemployment or welfare. These workers enable some industries to survive that otherwise might succumb to rising wages or cheaper imports. The undocumented workers pay far more in taxes and social security than they consume in social services. Extremely few seek welfare or unemployment benefits and the aliens are carefully law-abiding to avoid detection and deportation. The vast majority are temporary migrants who work in the United States about a half-year before returning to Mexico; very few stay longer than a year.48/

A study in San Diego County, the area of the nation most severely affected by the illegal entry of Mexican workers, estimated the total contributions of illegal aliens to unemployment insurance, workmen's compensation, social security and disability at $48.8 million in 1976. In the same period, the total cost impact attributable to illegal migrants on the San Diego County Social Service Delivery System was estimated at $6 million. Out of the $260.3 million estimated earnings of the aliens, most was spent in the U.S., however, $96.7 million was sent

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47/Task Force at 285.
48/Hearings at 361.

home to Mexico as a form of indirect foreign aid.49/ It is generally concluded that illegal aliens have an overall beneficial impact on the communities they work in.

SOLUTIONS

The solution to illegal Mexican migration in the long-run lies with eliminating the push *and* pull factors which contribute to it. To eliminate the push factor of unemployment in Mexico, we should provide technical assistance for and encourage private investment in labor-intensive rural development in the migrants' home areas. We can hope and expect that the development of Mexico's petroleum resources will help to stimulate the economy and provide long-term expansion of job opportunities. This may help to eliminate a portion of the push factors; however, this process will take many years.

We can assist the process of job growth in Mexico by extending trade and tourism preferences to Mexico. As former Ambassador Lucey said:

> Mexico needs the U.S. market for her manufacturers if her economy is going to develop the jobs needed to absorb her population increase. The United States cannot express concern about Mexican migration and be disinterested when it comes to Mexican economic growth.50/

However, the push factors are formidable and will be around for a long time. Forty-six percent of Mexico's population (estimated at 64 million) is below the age of 15; and of the working age population, 45 to 55 percent are unemployed or underemployed.51/ Even with a drastic drop in Mexican population growth, these figures would not be affected for a long time.

49/Villalpando, *Facts and Myths About the Illegal Migrant*, in The Problem of the Undocumented Worker, 47-48 (Latin American Institute, University of New Mexico, 1979).
50/See Lucey at 235.
51/See Cornelius at 38, 43.

It will be even more difficult to eliminate the pull factors which contribute to illegal migration. Proposals by former President Carter and others for employer sanctions overlook the inherently discriminatory effect of such actions. If the law is well enforced, employers will be afraid to hire anyone who looks like he might be a Mexican national; thus, discriminating against Hispanics who are citizens or legal residents of the U.S. The alternative of identity cards is abhorrent to American traditions of individual freedom.

Attempting to completely close the border would be the most drastic approach to eliminating illegal migration. Given our societal attitudes and budgetary limitations, such an effort is unrealistic. The expense involved in closing the border, both in money and in human rights, would be prohibitive. A "Tortilla Curtain" which forced Mexico to absorb the migrants into an already overburdened economy, would create the potential for turmoil south of the border. It would threaten not only our relations with Mexico, but would also potentially destabilize Mexico's internal situation. This is to say nothing of the human cost. Even a small increase in border enforcement leads to an increase in smuggling activity and the profits of the smugglers praying on human economic deprivation.

In the short-run we must recognize the existence of the real factors which cause illegal migration. We must move to regulate the flow of migrants in a way that recognizes the human facts of the situation while still providing necessary labor for the U.S. economy.

A program which would allow the number of Mexican workers required by U.S. business to enter this country legally for seasonal work would serve to bring Mexican migration under control. Such a program would meet the legitimate unmet needs of American employers for workers, while providing temporary employment opportunities for Mexicans in economic need and recognizing that these workers will come across the border someway.

As sensible as that seems, some52/ have criticized guest worker programs asserting that such will either continue to encourage illegal migration or depress domestic employment opportunities.

Such arguments ignore the fact that the Mexican government simply cannot absorb the workers currently in the United States if this government were to conduct another "Operation Wetback" or erect a "Tortilla Curtain" thus sealing the border. Even these actions might not stem illegal migration unless tremendous resources were allocated to the effort, including deployment of the military. Those options are simply not realistic and are necessarily excluded from serious consideration. Given the strategic importance of a strong and stable Mexico, it is obvious that American foreign policy should not contribute to increased social upheaval in that land. Rather, our policy should be geared toward assisting Mexico as it develops economically. In short, the solution is two-fold: a temporary worker program coupled with Mexican economic development.

The argument that such a program will either encourage more illegal migration or harm domestic workers is another example of conveniently ignoring the present situation. The *undocumentados* are here now and will undoubtedly be here tomorrow unless we begin to attempt channelizing them into a legal and realistic program.

52/V. Briggs, *Foreign Labor Programs as an Alternative to Illegal Immigration into the United States: A Dissenting View* (1980); D. North, *Non-Immigrant Workers in the United States: Current Trends and Future Implications* (1980).

To address this problem, I have introduced the "Compañeros" legislation which would create a temporary worker program (S.1427, the United States-Mexico Good Neighbor Act). Identical legislation has been introduced in the House of Representatives (H.R.5128). This legislation would provide for the legal provision of labor needs in the United States while also being a direct, people-to-people form of "foreign aid" and a means of training large numbers of future workers for Mexico's growing economy.

Putting available facts and logic together, the essential elements of a solution to the problem of illegal aliens are as follows:

- Make the workers' stays legal for the six months or so they need to be here and are, in fact, needed within our labor force.
- Base the number of temporary worker visas on the number of unfilled, unskilled or semi-skilled jobs in agricultural, service and other appropriate industries.
- Allow U.S. workers to protect their jobs at specific business locations if qualified and willing U.S. workers are available.

These elements are embodies in the United States-Mexico Good Neighbor Act.

Under the provisions of the bill, the Attorney General in consultation with the Secretary of State, would set up a program of temporary worker visas. Acting in consultation with the Secretaries of Agriculture, Labor and Commerce, the Attorney General would establish annual and monthly quotas for temporary worker visas based on need over-and-above available domestic labor. These visas would be issued by U.S. Consulates in Mexico on a first-come first-serve basis. The Mexican national holding such a visa would then be eligible to spend up to six months (eight months will probably be a more workable time) in the U.S. seeking or working at a job.

Clearly different from the old Bracero program, the legislation does not place any geographical and contractual restraints on where the visa holder may seek employment. Similarly, there is no prohibition on the type of work in which he or she may engage.

There is, however, a provision designed to help protect American workers at any given work location from unreasonable labor competition. The Secretary of Labor, under specific guidelines, could make a finding that at a specific business or agricultural site, there are sufficient qualified and willing domestic workers available. If so, Mexican nationals holding temporary visas would be restricted from working at that site.

Should a visa holder fail to return to Mexico after the expiration date of the visa or enter the U.S. illegally, there would be stiff prohibitions on his or her eligibility for future visas. However, it is clear that the real incentives for the worker to adhere to the provisions of the program would be that their stay in the U.S. would be legal and not subject to the uncertainties and potential abuses of an illegal status. A program that conforms to reality is always more workable than one which creates an impossibly artificial reality.

As a legal worker, the Mexican national would be clearly protected by the laws and Constitution of the United States. Decent working conditions and needed social services could be obtained without fear of deportation.

The legality of the Compañeros program would eliminate the economic incentives for smugglers. Furthermore, remaining border and immigration law enforcement efforts would be enhanced since the numbers of illegal aliens should decline to a more manageable level. American employers would find the legal workers more attractive than illegal migrants under the threat of apprehension by the Immigration and Naturalization Service.

CONCLUSION

We cannot eliminate illegal migration in the short-run. However, we can manage the flow of migrants with a Compañeros visa program which will conform to law and to the realities of the present situation.

By recognizing the Mexican perspective on illegal migration as well as our own economic realities and by accepting our own responsibility for the current situation, we can meet this problem in a friendly and constructive fashion. By working for good relations with our close neighbor, Mexico, we can finally turn our proximity into opportunity; our neighbors into friends. In today's world, we need all the friends we can get.

ACKNOWLEDGEMENTS

This paper on Los Compañeros was prepared with the assistance of Douglas McCullough of my staff. His help is greatly appreciated as is the modern research by the numerous workers in this field, without which the development of real solutions to the problems of economic migration would not be possible.

II

97TH CONGRESS
1ST SESSION

S. 47

To amend the Immigration and Nationality Act to establish a temporary worker's visa program between the United States and Mexico.

IN THE SENATE OF THE UNITED STATES

JANUARY 5, 1981

Mr. SCHMITT introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend the Immigration and Nationality Act to establish a temporary worker's visa program between the United States and Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "United States-Mexico Good Neighbor Act of 1981".

FINDINGS

SEC. 2. The Congress finds that—

(a) strong economic and political cooperation between the United States and Mexico will benefit not only the people of these countries, but will also help to eliminate western hemispheric tensions;

(b) the root cause of illegal migration from Mexico into the United States is the lack of reasonable alternatives for economic well-being in Mexico relative to those in the United States;

(c) the mutual benefit of past economic cooperation through legal work programs and investment opportunities is well documented;

(d) in order to eliminate the present large and uncontrolled influx of undocumented workers a system of temporary legal admissions should be established;

(e) the vast majority of jobs that will be taken by Mexicans are in the agricultural and service industries where jobs are not now greatly in demand by American workers;

(f) many of the short-term economic needs of Mexicans and the short-term labor needs of American agricultural and service industries can be met by a temporary worker visa program for Mexicans seeking temporary employment in the United States;

(g) the value to Mexico of temporary employment of Mexican workers in the United States is in the direct flow of dollars into its economy and in the increase in skills within its labor force;

(h) a program of temporary worker visas would encourage the existing temporary nature of most Mexican migration into the United States;

(i) attempts to seal our vast border with Mexico to the flow of migrants are doomed to failure and only increase the exploitation of such workers by smugglers and unscrupulous employers;

(j) employer sanctions against the hiring of illegal Mexican migrants could result in discrimination against Hispanic Americans and/or in an unprecedented national identification system; and

(k) it is necessary to establish a legal framework for Mexican labor in the United States in order to harmonize the use of such workers, to prevent abuse of them by smugglers and unscrupulous employers, to better protect American workers from unfair competition, to reduce the flow of illegal migrants, and to permit a better understanding of the scope of the opportunities and problems related to Mexican workers in the United States and Mexico.

ESTABLISHMENT OF VISA PROGRAM

SEC. 3. Section 214 of the Immigration and Nationality Act is amended by adding the following new subsections at the end thereof:

"(e)(1) The Attorney General, in consultation with the Secretary of State, shall by regulation establish a program for the admission as nonimmigrants into the United States under section 101(a)(15)(M) of Mexican nationals who desire to temporarily perform services or labor in the United States. The regulations shall establish methods for establishing monthly and annual numerical quotas for the issuance of temporary worker visas in accordance with subsection (g). Visas shall be made available on the basis of such quotas to qualified applicants in the chronological order for which they are applied. Such visas shall permit each alien to temporarily perform services or labor within the United States for a period not to exceed 240 days during any calendar year, such period not necessarily a 240-day consecutive period. Such aliens shall not be required to obtain a petition of any prospective employer within the United States in order to obtain such a visa. Such visas shall not limit the geographical area within which the alien may be employed nor set any limitations on the type of employment for which the alien may be employed, except as provided in subsection (f).

"(2) Any alien who obtains a visa under the program established under paragraph (1) who (A) violates the restrictions with respect to the amount of time for which the alien is allowed to remain in the United States, or (B) violates any restriction required under subsection (f), shall be ineligible to obtain another visa under such program for a period of five years. Any alien who, after the inception of this program, enters the United States unlawfully shall be prohibited from obtaining a visa under such program for a period of 10 years.

"(f) The Attorney General, upon request from the Secretary of Labor, shall place specific restrictions on employment of aliens holding temporary work visas under this program at a specific business or agricultural site if employees or employers demonstrate that such aliens will displace available, qualified, and willing domestic workers. The Secretary of Labor shall establish the criteria under which such restrictions may be requested.

"(g) When appropriate, the Attorney General shall seek the assistance of the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Labor in establishing the regulations under subsection (e), and in computing the annual and monthly numerical quotas for temporary worker visas, based upon the number of seasonal or cyclical workers sought by employers in the United States. In computing such quotas, the Attorney General shall also consider historical needs, availability of domestic labor, and the projected needs of prospective employers.".

UNITED STATES CONSULATES IN MEXICO

SEC. 4. (a) The Secretary of State is authorized to take such steps as are necessary in order to establish and expand the United States Consulates in Mexico in order to implement the program established in section 214 (e), (f), and (g) of the Immigration and Nationality Act, as added by section 3 of this Act.

(b) The Secretary of State shall coordinate with appropriate officials of Mexico in order to insure maximum awareness in Mexico of the nature and restrictions of the program established in section 214 (e), (f), and (g) of the Immigration and Nationality Act, as added by section 3 of this Act.

(c) The Secretary of Labor shall undertake to insure, to the extent practicable, that the nature and restrictions of the programs established in section 214 (e), (f), and (g) of the Immigration and Nationality Act, as added by section 3 of this Act are known to aliens of Mexican citizenship residing in the United States.

NONIMMIGRANT CATEGORY

SEC. 5. Section 101(a)(15) of the Immigration and Nationality Act is amended by adding at the end thereof the following:

"(M) a Mexican national who has no intention of abandoning his or her residence in Mexico who is coming to the United States for a period of not to exceed six months during any calendar year, for an indefinite number of such periods, to temporarily perform services or labor.".

EFFECT OF DEPORTATION

SEC. 6. Section 212(a) is amended—

(1) by inserting before the semicolon at the end of paragraph (16) a comma and the following: "except that the Attorney General shall not consent to the reapplying for admission of an alien described in section 101(a)(15)(M)"; and

(2) by inserting before the semicolon at the end of paragraph (17) a comma and the following: "except that the Attorney General shall not consent to the applying or reapplying for admission of an alien described in section 101(a)(15)(M)".

PROHIBITION ON ADJUSTMENT OF STATUS UNDER TEMPORARY WORKER VISA PROGRAM

SEC. 7. Section 245(c) of the Immigration and Nationality Act is amended—

(1) by striking out "or"; and

(2) by inserting immediately after "section 212(d)(4)(C)" a semicolon and the following: "or (4) any alien described in section 101(a)(15)(M)".

REPORT TO CONGRESS

SEC. 8. The Attorney General shall report semiannually to the Congress on the temporary worker visa program established in section 214 (e), (f), and (g) of the Immigration and Nationality Act, as added by section 3 of this Act, and shall include in that report a summary of the number of visas issued under the program, the effectiveness of the program, enforcement problems related to the program, and any recommendations for legislative change in the program.

BILATERAL ADVISORY COMMISSION

SEC. 9. It is the sense of the Congress that the President should negotiate with the appropriate officials of the Government of Mexico to establish an Advisory Commission on the Mexico-United States Temporary Worker Visa Program to consult with and advise the Attorney General in establishing the regulations, and in computing the monthly and annual numerical quotas, for the temporary worker visa program established under section 214 (e), (f), and (g) of the Immigration and Nationality Act, as added by section 3 of this Act.

AUTHORIZATIONS

SEC. 10. There are authorized to be appropriated such sums as are necessary to carry out the provisions of this title.

TERMINATION

SEC. 11. This program shall terminate 10 years after the date of enactment.

AFTERNOON SESSION

GUEST WORKER PROGRAM FROM MEXICO

Senator **Simpson**. The hearing will come to order, and I do apologize to my colleague from California. I am very sorry about that. You know what happens to us in this place, and it just happened again; the best-laid plans.

Senator Hayakawa, it is a pleasure to have you before the subcommittee and we look forward to your remarks on your legislation. And I want to thank you personally for the great interest and help and assistance that you have given us in this issue, and for your helpfulness to the staff and our people in sharing your views. Thank you so much for that, and we look forward to having your remarks.

STATEMENT OF HON. S. I. HAYAKAWA, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator **Hayakawa**. Thank you, Mr. Chairman. I am grateful to you and to your staff in helping me and my staff work out the problems confronting this piece of legislation. And I want to thank you, too, for the opportunity to testify before this subcommittee.

The question of a guest worker program from Mexico is very important to me. I have studied closely this issue. I have discussed it personally with President José Lopez Portillo of Mexico at his invitation in a visit to Mexico City. As you know, I have introduced legislation to create a guest worker program.

Now, discussions of the guest worker program frequently leave me quite disheartened. Rarely do we hear anyone address the basic needs openly. We continue to play a guessing game about the numbers of illegal immigrants, and yet we pay little attention to the farmers who complain that there are no American citizens available to harvest the crops.

We patronize the restaurants and resorts which continue to hire illegals because they are available and ready to do the work, but we accept their services as guests in these hotels and restaurants without worrying about the illegal status of the chambermaids, waitresses, and everybody else. And we avoid the issue of welfare payments that remove the incentive for Americans to accept these low-paying jobs.

And we hesitate to admit that we need to strengthen our relationship with Mexico, that Mexico genuinely needs the economic safety valve of U.S. jobs for some of its citizens. Few of us are aware that Mexico does not want to lose permanently its ambitious young men and women to the United States. They want them to come back after getting some work experience.

NONCONTROL OF ILLEGAL IMMIGRATION

Most of all, we continue to talk around the point that we cannot control illegal immigration across our southern border. It is a hopeless task.

And any discussion of a guest worker program, then, that does not take into consideration each of these points will be too superficial to be useful, and any resulting program from these discussions will solve only part of the problems and perhaps create new ones.

President Reagan's immigration package is an important first step forward. He is to be commended for attacking this controversial issue. But the President's guest worker program invites failure even before it gets underway. Rather than addressing the points I have just listed, the administration is focusing attention on amnesty proposals for those who have already settled in the United States. I am most concerned that the true causes of the problem are being overlooked.

The problem is the uncontrolled immigration from the south. What causes the problem? The answer is very simple: The Mexicans need jobs and there are jobs to be found in the United States.

UNEMPLOYMENT IN MEXICO

Our State Department places the level of those who are unemployed or underemployed in Mexico at around 40 percent. This creates a situation in which almost any job in the United States looks good from Mexico. U.S. immigration laws are simply obstacles that have to be overcome.

We have estimates that up to 1 million people are slipping across the United States-Mexico border every year. These people are risking their liberty and sometimes their lives to reach the promise of jobs in the United States. Can we really believe that they would continue to come if jobs did not exist?

Now, these jobs are usually at the lower end of the pay scales and the scales of prestige. These jobs are often seasonal. Hard physical labor is often involved. In other words, these are jobs that many American citizens simply do not want.

Sometimes a U.S. worker is better off financially if he or she remains on welfare instead. Sometimes the U.S. worker accepts the job, only to walk out after half a day after discovering how hard the work is.

WAGES OF ILLEGAL WORKERS

To those who say that the illegal workers are finding jobs only because they will work at substandard wages, that the illegal workers undercut Americans who need work but will not accept unfair pay, I say take another look at the actual situation. Seasonal agricultural work may be physically demanding, it may be uncomfortably hot working outdoors in the hot sun. It may require a lot of physical strenuousness and labor. But it does offer the hard worker as much as $100 a day and they are not being underpaid or exploited.

EMPLOYER SANCTIONS

The administration has proposed stiff sanctions against employers who knowingly hire illegal aliens. Perhaps sanctions are necessary to encourage participation in a guest worker program, but they must be accompanied by a legal work force large enough to meet employer needs.

For example, over 100,000 people are needed to harvest the raisin crop in Fresno County alone during the harvest season, and we are not counting the table grapes and the wine grapes in Fresno County. Just the raisin crop requires 100,000 or more people. And that is only one of the hundreds of crops that are grown in our 50 States.

California farmers write to me constantly about the labor shortages for a multitude of crops. Yet the administration proposes to allow 50,000 guest workers in each year to fill labor shortages in all 50 States, and in industry as well as agriculture.

Now, to combine employer sanctions with a 50,000 person guest worker program will result in punishing U.S. farmers and businessmen for an inadequate work force, a problem certainly beyond their control. We need a program large enough to provide legal workers for the jobs that are currently held by undocumented workers. If we use the figures generally accepted by the administration, we could be talking about an undocumented work force in this country right now of several million. But no one knows the figures, of course.

The administration opposes a bigger guest worker program on the basis that it would be difficult to administer. The present situation is even more difficult to be administered. It cannot be administered at all. But the smaller program offers little hope for participation for millions of potential illegal immigrants to change their status and come across legally.

How can we hope to evaluate a guest worker program that does not address this basic problem? Trying to remedy our labor shortages with 50,000 guest workers a year is like hoping to drive from Washington to San Francisco with only 20 gallons of gas.

GUEST WORKER ACT OF 1981

I have proposed a program which addresses the basic problem, I believe, and its causes. The Guest Worker Act of 1981 provides a plan that offers a workable alternative to the current uncontrolled immigration. It is a plan that offers an economic safety valve for Mexico while providing protection for American laborers. It is a plan that does not encourage Mexican citizens to settle permanently in our country, but allows them to meet immediate economic needs and then return home again.

And I need not emphasize enough the attachment of the Mexican worker to his native village. They would love to go back if they could, and if they can go back and forth freely under well-organized conditions they will do so. My plan is one that recognizes the fact that as long as there is a wide economic disparity between our bordering nations there will be migration of workers to the United States.

Therefore, I am proposing that each year for 5 years temporary worker visas be issued for up to 1 million Mexican nationals every year. Each visa will permit the person to enter the United States for a maximum of 6 months out of any calendar year to seek employment.

Unlike past programs, the worker will not be limited to a particular place of employment. Under the old bracero program, once a person——

Senator SIMPSON. I am sorry, Senator Hayakawa. We have a rollcall vote in progress and now we are at the 7½-minute bell and we both have about 5 minutes to go. I will be coming right back here if you wish to.

Senator HAYAKAWA. Maybe we should do that.

Senator SIMPSON. Yes, I think that is best. We will have a recess for about 10 minutes.

[Recess.]

ALTERNATIVE TO UNCONTROLLED IMMIGRATION

Senator SIMPSON. The hearing will come to order. And back to you, sir. We are ready to continue with your testimony, Senator Hayakawa.

Senator HAYAKAWA. Thank you, Mr. Chairman.

The Guest Worker Act of 1981 provides a workable alternative to the current uncontrolled immigration. It is a plan that offers an economic safety valve for Mexico, while providing protection for American laborers. It is a plan that does not encourage Mexican citizens to settle permanently in the United States, but allows them to meet economic needs and then return home.

It is a plan that recognizes the fact that as long as there is a wide economic disparity between the United States and our bordering nations there will be a migration of workers to the United States.

I am proposing that each year for 5 years temporary worker visas be issued for up to 1 million Mexican nationals. Each visa will permit the person to enter the United States for a maximum of 6 months out of a calendar year to seek employment.

NONLIMITING OF PLACE OF EMPLOYMENT

Unlike past programs, the worker will not be limited to a particular place of employment. Under the old bracero sanction, once a person had signed an employment contract he was bound to his employer. If he did not like his employer or the work, that was just too bad.

The restrictions of the previous program created a temptation to exploit the laborer, as does the restriction of their illegal status today. The mobility of the new guest worker will give him bargaining power and free him from potentially unscrupulous employers.

The worker will be expected to pay taxes like any other employee and in turn have the full protection of our labor laws. In addition, the mobility granted guest workers under my bill will allow them to be available on short notice. When, for example, the boysenberry crop is ready to be picked, there may not be enough time to make an application to the proper Government agencies, to wait for their evaluation of your needs and then complete the necessary paperwork to grant permission to hire alien laborers.

By the time all that bureaucratic work is done, the berries will have rotted on the ground. Agriculture is particularly sensitive to changing labor needs. An especially hot or cool summer may change by 2 or 3 weeks the proper time to harvest your delicate crops.

PROTECTION OF AMERICAN LABORERS

A major provision of my proposal is the protection offered to American laborers. The Guest Worker Act makes it illegal to hire temporary visa holders when qualified U.S. citizens or residents are available and willing to take the jobs at any specific place of business. The determination of availability will be made by the Attorney General upon the recommendation of the Secretary of Labor.

My bill also provides additional financial incentives for the visa holders to comply with the program. Each guest worker—and I think this is a novel proposal—each guest worker, to receive a visa, will be required to post a bond that will be held until his return within the requirements of the program. The bond then will be returned with interest paid at the prevailing rate. I want to emphasize that this builds in an incentive to return.

I would like to reiterate that the Guest Worker Act does not encourage Mexican nationals to settle permanently in the United States. President Portillo stated quite clearly that Mexico does not want to lose its work force to the United States. Mexico's growing economy will have an increasing need for these people in the coming years. Nor does the United States need the permanent additions to our own labor force. The Guest Worker Act serves the fluctuating needs of both nations.

BILATERAL ADVISORY COMMISSION

My bill also recommends that a Bilateral Advisory Commission be established with representatives from both the Mexican and United States Governments in equal number. This Commission is needed to permit better understanding of the needs of both nations that any guest worker proposal must serve. It is needed to insure that our relationship with Mexico will continue to be enhanced by a wisely directed guest worker program that is fair to the Mexican worker and to the American employer.

The Guest Worker Act will be in effect for only 5 years. It is an experiment. That will provide enough time to evaluate fully the effects of the program, but it is not so long that it will be difficult to end or change the program as necessary. In addition, the present act is limited to citizens of Mexico, not simply to address Mexico's needs but to provide an adequate test before we consider any possible expansion of the program to the citizens of other countries.

I am aware that many questions still remain regarding the numbers of undocumented workers and the degree of our reliance upon them. The patterns of migration and average length of stay are still disputed by experts. I do not think that any solution can be expected to be a panacea while these questions remain. However, the Guest Worker Act of 1981 does address what we do know about the situation and provides an opportunity to gain more information.

My plan essentially is a simple one. But it is a plan that recognizes the needs of our two bordering countries. It addresses the needs of U.S. employers to fill jobs, as well as our current inability to control illegal immigration. In short, my plan directly faces the basic problem and its causes.

Thank you, Mr. Chairman.

EMPLOYER SUPPORT FOR TEMPORARY WORKER PROGRAM

Senator SIMPSON. Thank you, Senator Hayakawa. Yours is a very intriguing proposal and provocative for us, and will be considered as we consider all aspects of this issue.

It has been, interesting to note that, despite the fact that various employer groups were invited to testify at this hearing, only agricultural employers showed an interest in appearing. This morning we had an administration witness testify. He did not cite any other employers outside of agriculture who were actively supporting this temporary worker proposal.

In your contacts with the U.S. business community and agribusiness in your great State, have you seen any other official or organized officials or organized interest groups or interest amongst other employer groups on this temporary worker program issue?

NONAGRICULTURAL UNDOCUMENTED WORKERS

Senator HAYAKAWA. Well, it is puzzling that agriculture and agricultural interests are the principal people interested in the guest worker program. Actually, fully half the guest workers or fully half the undocumented workers in this country do not work in agriculture. They work in restaurants, hotels, service industries in general.

Now, one reason that agriculture squawks about the present situation so loudly and the innkeepers and the restaurant owners do not squawk is a very peculiar fact about the way in which the Department of Immigration and Naturalization handles the problem of illegal aliens. Each unit of the INS wants to put up as good a score as possible, and by score they mean the number of illegals that they swoop down and capture within a given time period.

It is relatively easy to improve your score by swooping down upon a harvest and capturing 200, 300, 500 illegal Mexicans in a single raid on a large farm. To get an equal number of people in the service industries, chambermaids in hotels and motels, busboys, waiters, dishwashers and so on in the same amount of time, you cannot pick up that many. You can raid a McDonald's and you may with luck find five or six illegals, but that takes time. In the same amount of time you could round up 100 or 200 in a field where they are harvesting something.

So it is not that they are picking on farmers because they do not like farmers, but they can get a better service rating for capturing more illegals by raiding the farms, and therefore they leave the service industries very, very much alone, although as I say fully half the undocumented workers from Mexico in this country are working in the service industries.

It is widely said in Los Angeles, and I believe it, that if every illegal Mexican were thrown out of the restaurants and hotels and laundries and the service industries, if everyone were thrown out magically tomorrow, the day after tomorrow every restaurant and hotel in Los Angeles would be closed for lack of service.

Senator SIMPSON. Well, you have expressed that in a very colorful way and we are interested in that. I understand.

Senator HAYAKAWA. You see, they are not bugging the innkeepers. The INS is not bugging the restaurants. They really are bugging the farmers, and that is why we get so much protest from the farmers.

Senator SIMPSON. That is true. But we would have thought that as the subcommittee, has discussed introduction of employer sanctions, which are going to be part of any package that works, and which would apply to agriculture and the service industries as well—we are a little startled that employers are not supporting the temporary worker program. That is an interesting thing to us.

Well, I thank you very much, Senator Hayakawa. I may have some other questions that I could submit to you for the record. I will do so, and I think perhaps Senator Grassley and perhaps Senator Thurmond and perhaps Senator Kennedy may wish to present some questions. Thank you so much.

Senator HAYAKAWA. Thank you, Mr. Chairman.

Senator SIMPSON. The next portion of the hearing will consist of two members of a panel: John Etchepare, president of the Western Range Association. And it is nice to see you here this afternoon. And the American Farm Bureau Federation, Fred Heringer, president of the California Farm Bureau. Did I say that correctly? We will go in that order.

It is good to see you, my constituent from Wyoming and a person who has been very interested and very actively involved in the H-2 program and in the hearings of the Select Commission, and your testimony is always appreciated. So if you will proceed, please.

STATEMENT OF JOHN ETCHEPARE, PRESIDENT, WESTERN RANGE ASSOCIATION

Mr. ETCHEPARE. Thank you, Mr. Chairman.

I would ask that the submitted written testimony, if it could be entered into the record, and rather than sit and read from it I will just kind of go through and highlight it and then answer any questions that you may have or anyone on the committee might have.

Senator SIMPSON. It will be admitted into the record.

H-2 PROGRAM

Mr. ETCHEPARE. In reviewing the administration's proposal, what we have seen of it, the Western Range Association has really three areas of concern or areas we would like to comment on. One is the proposal to impose penalties on employers who employ undocumented workers. Two is the experimental guest worker program; and three, the proposals to streamline the existing programs which permit the importation of foreign labor into this country under the H-2 program.

In the area of the imposed penalties on employers who employ undocumented workers, the association itself is not against a form of penalty for people who do employ undocumented workers. But we feel that if this is to become a part of the new legislation, the new rules, it is going to become very important that we have a much better, much more functional H-2 program or H-2 temporary employee program, because I think these sanctions are going to cause some real problems.

And talking very personally, in our own operation, our sheep operation in Wyoming, we have herders we have to bring in. We also have to use large numbers of temporary workers for shearing during our ramming operations. It would be a rough estimate—I checked with my secretary before I left and I would say that 90 percent of those type of people to 100 are primarily of Mexican background. The balance would be of American background. They are all Americans.

It would be my guess, when we hired the majority of them, there was not a one of them that had a social security number or a birth certificate or even knew where to get it. These people come off of—it would not be a slum area, but they come to an area where they go out and work the temporary jobs, they hit town, they have a good party and generally get rolled somewhere along the line.

They lose their identity, their identification. And at the time they are needed to go to work they have no identification. I do not know if you have tried to apply for a new social security card or new identification. We do this for these people so that once they come to work for us, but you are looking at 1 or 2 months.

So when you are in need of temporary labor and one of the requirements may be, to protect yourself from these sanctions, that this person is going to have *x* amount of whatever type of identification, you are not going to be able to hire these people, because unless they happen to be someone you really know, a large percentage of these people will not have that documentation.

The sad thing about it is that the one person who will have that documentation will again be an illegal alien. The majority of people who sometimes we question whether they would be illegals that we are hiring at temporary times all have a social security number. It may not be valid, but they all have a social security number.

I think that because of this if we do put in these sanctions, at least within the area where we employ people, we will actually be to a degree taking Americans out of jobs for the simple reason that they are not going to have the documentation that will assure that employer that the person they are hiring is a legal person.

So the point we made in our written testimony is that if these sanctions go in it is going to be really important that we have means to have temporary labor, legal means, and that these things function and function rapidly. This is part of the biggest problem we have with the H-2 program today, that when you need these people—we are required 6 and 7 months to a year ahead of time give them notice that a year from now we are going to need someone, and in the sheepherding business this is a real problem. If a man just gets up and leaves, you have to do something with that band of sheep now. You cannot wait 6 months to 1 year to have that person.

The experimental guest worker program, as we have read it, does not solve our problem that we have, which is the lack of available qualified domestic sheepherders. One of the major problems is that this is strictly a temporary guest worker program, 6 to 11 months, and that does not provide the necessary time it takes any sheepherder just to learn the area he is going to be herding, the sheep, the country, the terrain.

He really is strictly in a learning and training position the first 11 months to 1 year that he is there. And his value to you as a sheepherder, and a good sheepherder, is the second, third, and, if you could keep him longer, third or fourth year that he is with you.

So a temporary program where this person is only with you for 6 to 11 months does not address our problem as far as the relation of sheepherders. We need someone who is more permanent, not that they want to live here forever, but someone who can come for 3, 4 or 5 years and do the job, and do the job that we need him for.

Senator SIMPSON. Thank you. Thank you very much.

[The prepared statement of Mr. Etchepare follows:]

STATEMENT OF JOHN ETCHEPARE

I. INTRODUCTION.

I am the President of the Western Range Association and a sheep rancher in the state of Wyoming. The Western Range Association is a group of employers who are broadly representative of the range sheep industry in the Western United States. The Association was formed in the early 1950s to bring sheepherders to the western range from the Basque regions of Spain.

At present the Association brings sheepherders to the United States from Peru, Mexico, and Spain as temporary workers under the H-2 program. All of the herders are experienced in herding sheep in the mountain regions of their home countries.

Sheepherders brought to the United States under the auspices of the Association stay for three years. All of their expenses, including room, board, and travel to and from their homes, are paid by the Association's member employers. Many herders save virtually all of their salaries and return home as relatively rich men.

The foreign sheepherders' labor is vital to the range sheep industry. Since World War II there has been a drastic undersupply of resident Americans who are willing to undertake the lonely, rigorous life of the open range sheepherder. The need for herders is greater now than in the past. Environmental restrictions on certain methods of dealing with predators have driven many sheep ranchers out of business. These restrictions have made the remaining ranchers ever more dependent on the sheep's last line of defense--the sheepherder, his dog, and his rifle. To the sheep raisers, the work of the foreign sheepherder is an economic necessity.

Most foreign herders enter into this country through the efforts of the Western Range Association. The Association's essential tool is the H-2 temporary foreign worker program. Yet the H-2 program is a flawed tool--flawed in its basic structure and flawed administratively in recent years by the Labor Department.

The Association, in presenting its views through me today, is vitally concerned about the future of the H-2 program. We want to be sure that the Administration's immigration proposals, if enacted, will not further flaw the H-2 program. More importantly, we want the Congress to seize the opportunity which is presented by the Administration's proposals to reform the H-2 program's basic structural flaws.

II. POSITION OF THE WESTERN RANGE ASSOCIATION ON THE PROPOSED IMMIGRATION PROGRAM.

There are three aspects of the Administration's immigration program which are of concern to the members of the Western Range Association. These three aspects are: (1) the proposal to impose penalties on employers who employ undocumented workers; (2) the experimental "guest worker" program; and (3) the proposal to streamline existing programs which permit the importation of foreign labor into this country.

We are aware that employer penalties are not a part of the subject matter of today's hearing. We intend to make no comment on the details of the penalties proposal. However, it is important in the context of today's hearing to point out the impact which any employer penalty law will have on the Association's members as agricultural employers and as employers of H-2 sheepherders.

A. Employer Penalties.

Despite the fact that its members are employers, the Association does not oppose the Administration's proposal to impose penalties against employers who knowingly hire illegal aliens. We insist, however, that it is necessary to compensate employers for the imposition of such sanctions by a drastic reformation of the H-2 program.

The reason for the Association's position is the probable labor market effect of the penalties proposal. That effect may be demonstrated by examining the present range sheepherder labor market.

At present the Association brings to this country approximately 300 H-2 sheepherders each year. In addition, applications from about 30 people seeking sheepherder jobs are received each year by the Association. Some of these applications are referred to the Association by state employment service offices; the rest are received directly from persons who have seen the Association's newspaper advertisements. Of the 30 applicants, some may in fact be undocumented workers. The Association has no way of knowing whether or not the applicants are in this country legally.

The Association's members also employ sheepherders who apply directly to them. One could speculate that even in the employ of this group (which is turning itself inside out to fill its labor need with H-2--legal--sheepherders) there may be a substantial number of undocumented workers.

The Association's membership comprises a majority, but not all, of the range sheep producers in the West. There are many ranchers who choose not to undertake the expense and aggravation of a legal program such as that operated by the Association. We doubt that it is mere speculation that the ranchers who choose not to employ H-2s are employing a substantial number of undocumented aliens.

To the present labor market as described above, one must then add the factors of substantial penalties for the employment of undocumented workers. All sheepherder employers, both Association members and nonmembers, will thereafter be competing for those workers who can provide the required documentation. There will be a drastic shortage of sheepherders. This will place a crushing new burden on the already overburdened, inefficient H-2 program.

The Association therefore opposes the employer penalties proposal unless it is coupled with a complete revamping of the H-2 program as decribed below.

B. The "Guest Worker" Program.

The Association is also concerned about the proposed experimental "guest worker" program. The guest worker program will not provide any improvement in the labor market in the range sheep industry. The number of "guest workers" proposed, 50,000, is far too small to have any impact on that market. The 50,000 workers will be consumed quickly by industries which have demands for greater numbers of workers and for less skilled workers. Larger employers and larger foreign worker programs will be much better able than the range sheep industry (which imports only about 300 sheepherders per year) to take advantage of the guest worker program.

In addition, the Administration has proposed certain conditions for the guest worker program which make it unattractive to employers in the range sheep industry. One such condition is the nine to twelve month limitation on the guest worker stay. Programs of such short duration are not helpful to the range sheep industry because of the time needed for orientation of the foreign worker to American sheep-raising methods and because of increased travel costs.

The proposed guest worker program may also allow each state governor to restrict the use of guest workers in his state. This would, in effect, subject the program to state control, resulting in varying requirements placed on employers by the various states. The range sheep operations of many of the Association's members extend over several states. The qualifications and duties of the range sheepherder position are uniform throughout the Western states. Therefore, a national program without state-by-state variations is the only program which the Association and its members can use.

In sum, the Association does not oppose the guest worker program, although the program will not meet the needs of the range sheep industry. We do strongly urge that the guest worker program not be merged or even confused with the present H-2 program. The guest worker program can never be seen as a replacement for the H-2 program.

C. Streamlining the Labor Certification Process.

While the Association takes a cautious but neutral stand on the Administration's guest worker proposal, it is strongly in favor of the proposal to streamline existing programs for the importation of foreign workers. Attorney General Smith's statement describing the Administration's streamlining proposals referred only to "nonfamily immigrants," but it is evident that the need for streamlining and cutting of costs is equally urgent in the nonimmigrant H-2 program.

The Association proposes two reforms which would greatly increase the value of the H-2 program to employers while cutting its administrative costs. These reforms would not eliminate any protection now offered to American workers. The Association's proposals are:

1. Issue Blanket Certifications. Blanket labor certifications should be issued covering certain occupations known to be in constant undersupply, such as range sheepherders. This type of reform was proposed by Attorney General Smith.

There are simply no qualified, willing American sheepherders who are not already herding sheep. Even the Department of Labor's employees have admitted this fact. It makes no sense to require the state employment services each time a new sheepherder is needed (and again after each 11 months until he leaves the country) to search for sheepherders who simply do not exist. The Association has partially alleviated this problem by placing with the state employment services an open, blanket job order promising to hire any qualified domestic sheepherder, wherever and whenever he or she emerges. The Association will keep such an open job order on file in any case, because its members always need qualified sheepherders. Nevertheless, the law should allow the Department of Labor to certify to the Attorney General the simple, immutable fact that the Association's program will not and cannot displace Americans.

2. Establish "Date Certain." The current 11-month labor certification period under the H-2 program should be eliminated. Instead, visas for foreign workers should contain a "date certain." The date certain would be the last day of the period of the employer's need for the employee's services. The period could be as short as a few weeks (in the case of certain harvest occupations) or, in the case of range sheepherders, as long as three to five years.

There is a single, compelling reason for the date certain proposal: saving money. At present sheepherders who are already in the country must be recertified two or three times before they leave. Since the certification process takes several months, the paperwork is in almost constant circulation between the Association, its members, and various state and federal agencies. This circulation lasts the entire span of the sheepherder's three-year stay in the United States. Yet the process is useless: no new American sheepherders are ever found; the wages and conditions of the job are determined over and over again to be adequate; the recertifications are never denied. A three-to-five-year date certain period for sheepherders would save a large part of the Association's administrative costs and substantial time and money for federal and state agencies.

III. CONCLUSION.

The Association's proposals have one primary goal: economy. Economy for the Association, its members, and the government. The economies which would be gained through these proposals would be a Godsend to an industry which is older than this nation but which is now engaged in a struggle for survival against foreign competitors. Those economies should also be important to a government which is trying to establish a new, less expansive role.

We urge you to include the Association's proposals in the legislation which results from this Subcommittee's consideration of the Administration's immigration plan.

I would be glad to answer any questions which you may have concerning the Association's proposals.

Senator SIMPSON. Mr. Heringer, if you will proceed, we have another rollcall vote, but I think we can get your 5-minute segment in. And then we will have a recess for 10 minutes, if you will proceed.

STATEMENT OF FRED HERINGER, PRESIDENT, CALIFORNIA FARM BUREAU FEDERATION; DIRECTOR AMERICAN FARM BUREAU FEDERATION

Mr. HERINGER. Thank you. I will try to abide by the 5 minutes. My name is Fred Heringer, president of the California Farm Bureau Federation and a member of a farm family corporation in California, farming corporation, a member of the American Farm Bureau Board.

I have a full statement here. I want to talk about some general principles as a guide for drafting some legislation which is presently encompassed in Congressman Pashayan's bill, which I think is H.R. 4795. So I will read from the statement.

Farm Bureau policy favors adoption of a workable program for the temporary employment of foreign workers in agriculture when and where American workers who are willing and capable of performing the work are not available at reasonable pay and working conditions. We recommend the following general principles as a guide to drafting such a foreign guest worker program:

One, guest workers should be recruited upon petition of individual agricultural employers or associations of agricultural employers and assigned to work for specific employers with provision for transfer to another employer when the original employer no longer has need for the guest workers;

Two, the program should not be limited to any one country as a source of such guest workers;

Three, the administering agency should have expertise concerning the needs and special requirements of seasonal employment in agriculture;

Four, employers applying or petitioning for recruitment of foreign workers should be required to make a reasonable effort at recruiting American citizens for the needed employment;

Five, petitioning employers should be required by law to provide certain guarantees on wages, working conditions, and arrange for housing as a part of the job offer;

Six, the guest worker should be recruited for temporary employment of up to 1 year, with the option of extending the period of employment for a maximum of 2 additional years;

Seven, employers with a history of labor law violations should not be eligible for the program;

Eight, the administering agency should be given authority to charge employers a reasonable fee to cover the direct cost of administration;

Nine, employers should be required to post a reasonable performance bond so as to provide an additional means of protecting the welfare of guest workers;

Ten, the administering agency should have authority to cancel a certification for guest workers for stated cause;

Eleven, undocumented workers already in this country should be given an opportunity to become a part of the guest worker program as an alternative to amnesty; and

Twelve, administrative procedures of the program should be spelled out in the act in sufficient detail so as to make the program workable and practical.

These guidelines have been incorporated in legislation introduced by Congressman Pashayan in the House, H.R. 4795, a copy of which we would like to submit for the record at this time. Similar legislation will be introduced in the Senate within a few days. We recommend that such a bill be incorporated as a part of the overall reform of the Immigration and Naturalization Act.

The draft bill is based on the concept of the H-2 provision of the Immigration and Naturalization Act. Essentially, the bill expands that concept by amending the regulations issued by the Department of Labor in 20 CFR part 655 and making these rewritten rules a part of the act. The changes incorporated in H.R. 4795 would produce a guest worker program particularly designed to meet the needs of agricultural employment.

The bill designates the Secretary of Agriculture to administer this agricultural guest worker program. While we do not feel it is necessary to move the program out of the Department of Labor if the guidelines are written into the act as provided in this bill, we have over the years had reason to doubt whether the Department of Labor is capable of administering a program that is responsive to the needs of agriculture.

If enacted into law, the draft will would: (a) provide the kind of workable program needed in agriculture; (b) provide ample protections to the foreign workers; (c) not replace U.S. workers who are willing and able to fill the jobs; and (d) protect against abuse of the public interest by not only reducing illegal immigration and employment of illegals in this country, but by assuring that such temporary foreigner workers return home at the end of their temporary employment.

Since such guest workers would not be certified to any employer where U.S. workers are available and capable of filling the jobs, there would be a built-in limit on the number of certified workers in any given year.

We appreciate the opportunity to present the Farm Bureau's views and urge that the Congress enact a workable guest worker program as part of the comprehensive immigration reform. Thank you.

Senator SIMPSON. Thank you very much. Let us recess for 10 minutes. I will vote and return, and then we will go into some questions.

[A brief recess was taken.]

[The prepared statement of Mr. Heringer follows:]

STATEMENT OF FRED HERINGER

The American Farm Bureau Federation is a nonprofit organization of more than three million families in 48 states and Puerto Rico, financed by dues paid voluntarily on an annual basis. Our membership includes at least three-fourths of the commercial farmers and ranchers in the country and a substantial percentage of the 700,000 agricultural employers.

At the last annual meeting of the voting delegates of the member State Farm Bureaus, the following statement of policy was adopted as a part of an overall policy on Immigration Act reform:

> "We strongly oppose any moves to penalize farm employers for hiring workers who may be illegal."
>
> "We call for a workable program for the temporary employment of foreign workers during critical agricultural labor periods. The program should provide orderly procedures to phase-in available refugees who seek agricultural work."

We have filed a statement with this Subcommittee, outlining our position on employer sanctions and documentation of workers. We will address our remarks today to a guest worker program for agricultural employment.

Farm Bureau is pleased that the Administration has included an experimental guest worker program as a part of the general immigration proposals outlined by the Attorney General. We have not had opportunity to review specific legislative language for the administration's proposal and thus cannot comment in any detail on that proposal. However, we will outline the kind of guest worker program that would fulfill the needs of agricultural employers, while at the same time provide ample protection for the welfare of foreign guest workers and assurance that such a program would not be a burden on American workers or on society in general.

We recommend the following general principles as a guide to drafting a foreign guest worker program:

1. The guest workers should be recruited upon petition of individual employers or associations of like employers, and assigned to work for specific employers, with provision for transfer.

2. The program should not be limited to any one country as a source of such guest workers; but should be established through arrangements with participating countries. It is expected that most such workers would come from Mexico.

3. The administering agency should have expertise concerning the needs and special requirements of seasonal employment in agriculture.

4. Employers applying or petitioning for recruitment of foreign workers should be required to make a reasonable effort at recruiting American citizens for the needed employment, including the filing of a job order with the Federal-State Employment Service.

5. Petitioning employers should be required by law to provide certain guarantees on wages, working conditions and arrange for housing as a part of a job offer so as to guard against exploitation of the foreign workers.

6. The guest workers should be recruited for temporary employment of up to one year, with the option of extending the period of employment for a maximum of two additional years.

7. Employers with a history of labor law violations should not be eligible for the program.

8. The administering agency should be given authority to charge employers a reasonable fee to cover the direct costs of administration.

9. Employers should be required to post a reasonable performance bond so as to provide an additional means of protecting the welfare of guest workers and to help assure that the temporary workers return to their native country at the end of the time limit in the program.

10. The administering agency should have authority to cancel a certification for guest workers for stated cause.

11. Undocumented workers already in this country should be given an opportunity to become a part of the guest worker program as an alternative to amnesty, as a means of achieving legal status and affording themselves the protections of the program.

12. Administrative procedures of the program should be spelled out in the Act in sufficient detail to make the program workable and practical and to give some assurance to employers that if they meet the tests for certification they would will not face lengthy bureaucratic delays and other such barriers.

These guidelines will be incorporated in legislation to be introduced shortly in the Senate and House, a draft of which is attached to this statement. We recommend that such a bill be incorporated as a part of any overall reform of the Immigration and Naturalization Act.

The draft bill is based on the concept of the "H-2" provision of the Immigration and Naturalization Act, which provides basic authority for the Attorney General to authorize the admission of nonimmigrant aliens on a temporary basis to perform services under circumstances that would not have an adverse effect on American workers. Essentially, the bill expands that concept by amending the regulations issued by the Department of Labor in 20 CFR Part 655 and making those rewritten rules a part of the Act. The changes incorporated in the draft would produce a guest worker program particularly designed to meet the needs of agricultural employment.

The bill designates the Secretary of Agriculture to administer this agricultural guest worker program. While we do not feel it is necessary to move the program out of the Department of Labor if the guidelines are written into the Act as provided in this bill, we have, over the years, had reason to doubt whether the Department of Labor is capable of administering a program that is responsive to the needs of agriculture. The Immigration and Naturalization Act does not designate the certifying agency for H-2. It is, instead, left to the Attorney General to make an arrangement with whatever agency of government he chooses. The bill does not change that.

Past experience with the H-2 program, as administered by the Department of Labor, has not been good, though some 20,000 temporary foreign workers have been recruited for agricultural employment in an average year for several years. Most of these workers have come from Jamaica and have been employed mainly in harvesting sugarcane in the South and in picking apples in the Northeast. A few have been certified from Mexico and some from Canada. This very limited number of temporary foreign workers has been recruited in spite of the unnecessary regulatory barriers contained in 20 CFR Part 655.

The difficulty in the past has been that officials in the Department of Labor have taken the attitude that when they were forced - sometimes by court action - to certify admission of foreign workers, they had failed in their primary mission of protecting the welfare of U.S. workers; and that such foreign workers would not be necessary if agricultural employers would simply increase wages and improve working conditions.

Any administering agency which has such an attitude and holds such assumptions is not capable of operating a guest worker program that is fair to the foreign workers, to U.S. workers, to employers and consistent with the public interest.

If enacted into law, the draft bill would (a) provide the kind of workable program needed in agriculture; (b) provide ample protections to the foreign workers; (c) not replace U.S. workers who are willing and able to fill the jobs; and (d) protect against abuse of the public interest by not only reducing illegal immigration and employment of illegals in this country, but by assuring that such temporary foreign workers return home at the end of their temporary employment. Since such guest workers would not be certified to any employer where U.S. members are available and capable of filling the jobs, there would be a built-in limit on the number of guest workers certified in any given year.

We appreciate the opportunity to present Farm Bureau's views and urge that the Congress enact a workable guest worker program as a part of comprehensive immigration reform.

(Original signature of Member)

97th CONGRESS
1st SESSION

H.R. 4795

To amend the Immigration and Nationality Act, and for other pruposes.

IN THE HOUSE OF REPRESENTATIVES

Oct. 20, 1981

By Mr. PASHAYAN

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Agricultural Foreign Guest Worker Act of 1981."

SEC. 2. The Congress finds and declares that--

(1) the cause of illegal migration to the United States is generally due to the lack of reasonable alternatives for the domestic well-being of individuals in their native country relative to those in the United States;

(2) a supplemental workforce is needed for the seasonal requirements of certain segments of the American agricultural economy; and

(3) in order to reduce the present large and uncontrolled influx of undocumented workers a more flexible and workable system of temporary legal admissions should be established.

SEC. 3. Clause (ii) of section 1101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is amended to read as follows:

"(ii) who is coming temporarily to the United States for a period not in excess of one year to perform temporary services of labor, if unemployed persons capable of performing such services or labor cannot be found at the time and place of need;"

SEC. 4. Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding after subsection (d) the following new subsection:

"(e)(1) an employer or association of employers desiring to recruit foreign workers for temporary employment in agriculture shall file a temporary foreign agricultural labor certification application, including a job offer for U.S. workers, with the Secretary of Agriculture.

"(2)(A) Within thirty days following receipt of a request for temporary foreign agricultural labor certification and a qualified job offer the Secretary of Agriculture shall either--

"(i) refer to the employer domestic workers in the number requested who are able and qualified and who agree to commence employment on the date and to work for the period specified in the request; or

"(ii) make the certification requested.

"(B) If a request filed pursuant to this subsection has not been acted upon by the Secretary of Agriculture within five calendar days of the date on which the Secretary of Agriculture is required to act under subparagraph (A), the employer may file with the Attorney General or his designee, a petition for admission of temporary foreign agricultural workers that includes the following statement: 'The Secretary of Agriculture has failed to act on the employer's request for certification on the date required by law'. The Attorney General or his designee shall immediately verify the Secretary of Agriculture's failure to act and upon confirmation the Attorney General or his designee shall process the application as if the requested certification had been granted by the Secretary of Agriculture in the numbers and for the periods of time requested by the employer. Acceptable evidence by the Secretary of Agriculture rebutting their employer's assertation that the Secretary has failed to act within the timetable set forth in subparagraph (A) shall be limited to a dated confirmation copy of the Secretary of Agriculture's timely notice to the employer of the availability of U.S. workers or the issuance of the requested certification."

"(C) For the purposes of subparagraphs (A) and (B)--

"(i) the term 'agriculture' has the meaning given the term in section 3 (f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), and

"(ii) the term 'agricultural labor' has the meaning given the term in section 3121(g) of the Internal Revenue Code of 1954.

"(D) The Attorney General shall, upon receipt of a further determination and certification by the Secretary of Agriculture extend the term of an alien's admission for a period not exceeding two years in the aggregate.

"(3)(A) The Secretary of Agriculture shall require an employer filing for a temporary labor certification to comply with the following minimum provisions in a job offer:

"(i) housing shall be provided or offered and such housing shall meet applicable local building and health codes;

"(ii) if meals are provided the employer may charge workers for the cost of providing such meals;

"(iii) if housing is provided the employer may charge workers for the cost of providing such housing;

"(iv) in lieu of providing housing and meals, an employer may provide to workers a cash equivalent, based upon a determination by the Secretary of Agriculture, that would represent the equivalent value of housing and meals if provided at the site of employment or in the general area of employment, not to exceed 50 miles from the place of employment, and such cash equivalent shall be a portion of the wages as defined by section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m));

"(v) if the job opportunity is covered by a State workers' compensation law, temporary foreign agricultural workers shall be covered;

"(vi) if the job opportunity is not covered by a State workers' compensation law, the employer shall provide at no cost to the temporary agricultural foreign worker, insurance covering injury and disease arising from the job opportunity which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment;

"(vii) the wage rate shall be the Federal minimum wage, the State minimum wage, or the prevailing wage rate in the area of intended employment, whichever is highest;

"(viii) a guarantee to the worker of employment for at least three-fourths of the workdays of the total period during which the work contract and all extensions are in effect;

"(ix) The employer shall keep accurate and adequate records with respect to the worker's earnings, including field tally records, support summary payroll records, and records showing the nature and amount of the work performed, the number of house of work offered each day by the employer, and hours actually worked each day by the worker, the time the worker began and ended each day, the rate of pay, the worker's earnings per pay period, and the amount and reasons for any and all deductions made from the worker's wages. The employer will retain the records for no less than three years after the completion of the contract and will furnish to the worker on or before each payday a statement of the workers' total earnings and itemization of all deductions made;

"(x), If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of any worker for whom the employer would have otherwise been required to pay such expenses;

"(xi) If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire or Act of God that makes the fulfillment of the contract impossible, the employer may terminate the work contract. In such cases the employer will make efforts to transfer the worker to other comparable employment acceptable to the worker. If such transfer is not effected, the worker will be returned to the place from which the worker, without intervening employment, came to work for the employer at the employer's expense.

"(B) For the purposes of subsection (A, the term employer means any individual, partnership, association, joint stock company, trust cooperative or corporation that has a fixed site located within the United States.

"4(A) Upon petition, the Secretary of Agriculture shall provide term certification for up to three years to agricultural employers who for each of the previous three years have been certified as having a need for temporary agricultural labor as provided for under this Act.

"(B) The Secretary of Agriculture may require an applicant for term certification or temporary labor certification to post suitable bond or undertaking approved by the Attorney General in such amount and containing such reasonable conditions as he may prescribe. Any sums or securities held to secure performance thereof, except to the extent forfeited for violation of the terms thereof, shall be returned to the person by whom furnished, or upon the permanent departure from the United States of the nonimmigrant.

"5(A) In carrying out the provisions of this Act the Secretary of Agriculture is authorized to--

"(i) enter into agreements with other Federal agencies to utilize the facilities and services of such agencies, and to allocate or transfer funds or otherwise to pay or reimburse such agencies for expenses in connection therewith;

"(ii) to accept and utilize voluntary and uncompensated services; and

"(iii) when necessary to supplement the domestic agricultural labor force, to cooperate with the Secretary of State in negotiating with any foreign government any agreements or arrangements related to the employment in the United States, subject to the immigration laws, of temporary foreign agricultural workers.

"(B) The Secretary of Agriculture shall by regulation fix and collect fees and charges for certification of temporary foreign agricultural workers. The fees and charges authorized by this subsection shall, as nearly as possible, cover the costs of such services, including the administrative costs. The fees and charges, when collected, shall be credited to the current appropriation account that incurs the cost and shall be available without fiscal year limitation to pay the expenses of the Secretary incident to providing services under this Act.

"(C) If after the granting of temporary foreign agricultural certification or term certification, the Secretary of Agriculture has probable cause to believe that an employer has not complied to the terms of the certification, the Secretary shall investigate the matter. If the Secretary concludes that the employer has not complied with the terms of the certification he shall notify the employer that he will not be eligible to apply for certification in the coming year. Such notice shall be in writing and shall state the reasons for the determination, and shall offer to the employer an opportunity to request a hearing within 30-days of the date of the notice.

"(D) There are hereby authorized to be appropriated such sums as are necessary to implement this Act.

SEC. 5. Notwithstanding any other provision of law, any alien in the United States may, in the discretion of the Attorney General and under such regulations as he may prescribe, be permitted to apply for adjustment of status to that of a nonimmigrant described in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act, if the alien applies for such an adjustment within six months of the effective date of this Act and if such person is not otherwise inadmissible as a nonimmigrant under paragraphs (9), (10), (12), (13), (23), (27), (28), (29), or (31) of section 212(a).

SEC. 6. Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by adding at the end thereof the following new subsection:

"(k) The provisions of subsection (a)(14)(B) requiring a determination and certification respecting the adverse effect on the wages of workers in the United States of the employment of aliens shall not apply in the case of nonimmigrant aliens seeking to come temporarily to the United States to perform agricultural labor.

SEC. 7. Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following: "This subsection does not authorize the Attorney General to require (1) a determination and certification respecting the adverse affect on the wages of workers in the United States of the employment of aliens in the case of nonimmigrant aliens seeking to come temporarily to the United States to perform agircultural labor, or (2) a minimum wage for such aliens".

SHEEPHERDER WAGES

Senator SIMPSON. Thank you for your understanding of the delay.

Several questions. In your testimony, Mr. Etchepare, you state the room and board and travel expenses of the herders are paid and that most of their salary is saved perhaps by them. What is the average wage of a sheepherder?

Mr. ETCHEPARE. I believe today it is right at $600, $600 to 625, somewhere in that area.

Senator SIMPSON. A month?

Mr. ETCHEPARE. A month; plus room and board.

Someone asked me a question just a few minutes ago. In your actual out-of-pocket, especially with an H-2 herder, it is probably closer to $1,000 a month, but the money that he receives directly to him is about $600.

Senator SIMPSON. What would be the effect of higher wages on the supply of U.S. workers willing to work as sheepherders?

Mr. ETCHEPARE. The best way I can answer that, I started with the sheep industry—as far as the ranch we have now—about 18 years ago, and we could hire between both domestic and foreign herders. Our herders were costing us somewhere between $180 or $200 a month. And in relation at that time to what other wages were, they were fairly low. Our wages are now much closer to wages they can earn in other forms of work and be able to retain that money they have earned, and we have fewer domestic herders today than we had then.

Sheepherding as a profession is basically a way of life. In this country, really, we no longer live off the land as we did years ago and years past. People today are not really that interested in going back to living off the land.

If there is some other way to earn a living, to earn a livelihood, they are going to take it. This is really our biggest problem. It is not the amount of money of the wages, the domestic herders we hire today, I have never had a problem. The herder wants to know do you furnish a horse, what kind of horse are you going to furnish, what is the terrain like, how steep is it. And it is not a question of wages, it is more a question of the type of terrain and how do you want the sheep herded.

HERDER TURNOVER

Senator SIMPSON. You testified that herders should be brought into the United States for 3 to 5 years perhaps under the H-2 program in order to avoid the recertification. What percent of the herders that you and the people you represent, what percent do not continue their employment for a period of a full 3 years? I would like to know what turnover there is? What is that?

Mr. ETCHEPARE. We definitely have some turnover. This would just be an estimate on my part, Mr. Chairman. I would say it would be somewhere in the area of 20 percent that do not stay—this is of the H-2 herder—who will not stay the full 3 years of his term.

Senator SIMPSON. You also testified that the association has an open type of job offer for any qualified domestic herders, but there really are simply no qualified willing American herders who are not already involved in doing that, apparently. Many industries who require employees with a skill in short supply have a training program. Does your association or the members ever seek to train Americans for this particular purpose?

Mr. ETCHEPARE. Yes; Senator, we do continually. In fact, we are training new people all the time. On our ranch alone we will bring in, oh, especially at the start of lambing—this is the time we try to train them because we have a lot of supervision to work with them—in the past years, I will work with two to three to four girls who will come onto our crews who will work.

In fact, one of my key lambing bosses who runs a lambing camp is a girl from California that comes out every spring for lambing. She leaves college and comes out. She came out to start as a sheepherder.

So we are training those people in this country that want to learn. We have worked with them in our training. The Wyoming Wool Growers Association is presently working with the University of Wyoming on strictly setting up a sheepherders school at the University of Wyoming.

So we are continually trying to develop new people in this country or people who will go in to this profession and take it as a profession. And there are numbers of young people.

You may have read in Reader's Digest not too long ago of a young girl that herded sheep for about 3½ years in the northern part of the State. So we are doing these things to try to develop our own domestic herders.

AGRICULTURAL WORKERS

Senator SIMPSON. That is very interesting. This morning we heard some testimony from the Department of Agriculture that the U.S. migrant farmworker population had come down from 400,000 in 1960 to 200,000 in 1970. Then there was an estimate that there were 300,000 to 500,000 illegal immigrants or illegal migrants working in agriculture as well as 18,000 agricultural H-2 workers.

I would be interested in your comments on that trend. Are your employers in fact finding fewer and fewer American workers applying for jobs? If so, how do you explain that, since certainly U.S. workers have done those jobs, even herding, for generations? Are U.S. workers being increasingly excluded from those jobs, pushed out of those jobs?

How do you respond to critics of temporary worker programs who assert that such programs would simply institutionalize a subclass of workers not accorded full rights as residents, who would be relegated to jobs which Americans find unacceptable? What is your thought on that?

That is a long, tortuous question, admittedly. But I would be interested on your thoughts on that. Do you have any?

Mr. ETCHEPARE. Well, one, I guess I have a problem, Senator, in that I do not consider sheepherding that kind of a job. In fact, over the history of sheepherding, and just speaking as it relates to this, probably one of the highest paid men in agriculture is the sheepherder. To me, it is a sad thing that maybe we have classified it as a subculture or whatever you want to call it.

Senator **Simpson**. Critics do, though.

Mr. **Etchepare**. This bothers me. And to be honest, I have a son at the University of Wyoming who gets very upset when someone asks me what I do and I tell them I am a sheepherder. He thinks it is much better if I tell them I am in ranching or some other function. I guess I have a problem because that is the way I started, and I am proud of being a sheepherder. I do not think it is that low a position. And this is a sad thing.

Maybe it has come right out of our own Department of Labor, and I have had some real discussions and arguments over it. They have taken the position that if you cannot do anything else, you can go and work on a farm or you can become a sheepherder if you have no other qualifications. This is totally wrong. I think a lot of these people have to have a lot more qualifications than being the guy who can't do anything.

And I do not think that by increasing our H-2 program, making it a better, functional program, that we are going to create this, because these people coming from these other lands, who are still very related to the land, being a sheepherder in Peru or having a job in Peru or being a sheepherder in Mexico or in Spain is not in those countries considered a lowly, degrading job.

They are in a much higher plane. So maybe to our standards or to that critic who has no understanding in most cases really of what that life is out there that we lead, maybe to him it is a low, degrading job, but to the man who has the job and who has a choice of coming here and being a sheepherder and earning $600 a month or herding sheep in Peru, which is his profession in Peru, and earning maybe $46 a month, he has a totally different view of that position.

I do not know if I have answered your question.

Senator **Simpson**. You certainly have assisted in getting some information into the record which I think is important.

Now, Mr. Heringer, do you have any response to that rather extended question about that trend of U.S. migrant farmworkers? Do you have any comment on that?

Mr. **Heringer**. If I understand the question, I do not think there is any doubt in my mind that the U.S. migrant workers who are drawn to the industrial world because of the conditions that were there and at the time they came into the industrial world, agricultural returns to them were not comparable to what they were in industry. So they moved out of agriculture. I think that has been the pattern in this country ever since the day that we had an agricultural society.

AGRICULTURAL WORKER PROGRAM

Senator **Simpson**. Does your organization, Mr. Heringer, favor a new temporary worker program such as that submitted by the administration over the existing H-2 program, even with a streamlined certification procedure? How could the limits of a new program be enforced?

Mr. HERINGER. First, we are suggesting a program that is not in competition with any administration program, and I do not know if there is an administration program being developed. And it is not in competition with the H-2 program. All we are trying to do here is come in with a supplemental program that will give agriculture a program they can live with, work with, and at the same time protect the workers that are in this country and give the illegals an opportunity, if they so wish, to become documented and be returned home under a program. That is the program we are talking about.

LABOR POOL FOR AGRICULTURE

Senator SIMPSON. Let me ask you this. The administration has proposed legalization of the status of all illegal immigrants who have been here since January 1, 1980. Would that not be a very significant labor pool to address the needs of agricultural employers?

Mr. HERINGER. I do not know what kind of labor pool it would be. It is interesting to me that many people in this country talk about the illegal aliens that are in this country seeking jobs.

However, when you look at the unemployment records in this country in relation to the employment records, in my judgment the percentages stay about the same. Therefore, it becomes a contention on my part that the illegal people in this country have jobs, they are working and are earning a living out there. And we may not have the pool of labor that you suggest under an amnesty program or some legalization.

INDUCING AMERICAN LABOR TO AGRICULTURE

Senator SIMPSON. As I indicated to Mr. Etchepare, we discussed what a critic will say of such a program. I would ask how your organization responds to the assertion that a large temporary worker program constitutes a form of labor subsidy for employers who are not willing to adapt their jobs to remain competitive within the domestic labor market. Do you believe that if wages and working conditions in agriculture were improved sufficiently, that U.S. workers would then take those jobs?

Mr. HERINGER. No, I do not. Basically, I do not think they will return to the work.

And one reason we have the immigration in the agricultural area more so than in other areas is because as most of these illegals that people seem to talk about are working in industry and working in the service area—and there is a very small proportion of them in agriculture; some people talk about 15 percent or 10 to 20 percent—and as a consequence, the immigration service hits the farmers because they are grouped there.

And the reason these people are in the agricultural area, in my judgment, is because there they can come out and work under rates of pay which will allow them to make more money in a day than they can make in the service industry or the blue-collar industry. And that is why they are in agriculture, because under our piece rates and even under our hourly rates in California they can make as much money there in a day compared to what they can make in industry.

PROTECTING AMERICAN WORKERS

Senator SIMPSON. If a new temporary worker program were enacted, what regulations could be implemented to insure that employers do in fact actively recruit U.S. workers before applying for foreign workers?

Mr. HERINGER. We did have those types of regulations under the previous programs. Some of them were unworkable, but at the time I think they did protect the American worker as far as adverse working conditions which relate to hours and the type of employment and housing.

In our program we suggest such a program is developed to protect those workers. And we think we have it under H.R. 4795.

PRODUCTIVITY OF FOREIGN WORKERS

Senator SIMPSON. Is it a general perception among your people that you speak for that the foreign workers are far more productive and hence more desirable than U.S. workers?

Mr. HERINGER. From a productivity point of view, yes. In my judgment, people who are raised on the land come from the land in the sense that they have had experience in the farming community. They normally adjust much easier and more readily to the activity because they understand it. They know where it comes from.

Those people who have not, who have the same fear as a first-grader would the first day he goes to school because he has a fear of a new experience that he does not know anything about, so you face these conditions.

Now, I say they are more productive in this area. Now, you used the word "desirable." I do not think there is any question in my mind that people are looked upon as people in our labor force, and desirability is not a point in question.

RECRUITING LABOR

Senator SIMPSON. Just a couple of more questions, Mr. Etchepare. Does your association do any recruiting in other areas of the United States for herders, in the Southeast and Northeast?

Mr. ETCHEPARE. To the best of my knowledge, the Labor Department has a standing job order in every Labor office, I believe, in the country, and that of any herder. We also, through their regulations, advertise in *x* number of magazines We have to do open advertisement, keep open job orders, and we must advertise so much every month for sheepherders.

Senator SIMPSON. Let me ask another question. We received information in the subcommittee that there is a growing shortage not only of herders but what we know in our neck of the woods as cowboys. Are you finding that to be true? Are foreign workers being used more in the cattle industry? And how ironically historic that would be, since the Spanish and their ancestors were the first cowboys. What are you finding in that area?

Mr. **Etchepare**. As to whether there are a lot of Spanish-speaking——

Senator **Simpson**. Going into the cattle industry.

Mr. **Etchepare**. I have three cowboys working for me, and all of them are of Spanish background. To my knowledge, they are all domestic workers, and most of them have been with me for 4 or 5 years.

But there is a high percentage of these people moving into the old cowboy industry.

Senator **Simpson**. And it is not known whether they are from Mexico or are illegal aliens from other countries? What are you finding there?

Mr. **Etchepare**. As far as my own experience within our own outfit, one thing we have always done is we have always asked any person we hire to give us their social security number and as long as they furnish us that number, we make the payments that way, and we assume they are here legally or are a citizen. And if they do not have that, they have to have a green card. That is the way we handle it. To the best of our knowledge, these are all domestic American workers.

Senator **Simpson**. Well, I thank you very much. We are very appreciative of your testimony. It is helpful to have it. We appreciate your cooperation. Thank you very much.

We will go now to the next panel, the National Association of Farmworker Organizations. Abelardo Perez, legal counsel of that organization; the AFL–CIO, Food and Beverages Trade Department, Peter Allstrom, director of research; migrant legal action program, Garry Geffert, of the West Virginia Legal Services Plan, Inc.; and Arnold Torres, of LULAC, the League of United Latin American Citizens.

So let us go in that order, and if you will, please proceed. Thank you.

STATEMENT OF ABELARDO PEREZ, LEGAL COUNSEL, NATIONAL ASSOCIATION OF FARMWORKER ORGANIZATIONS

Mr. **Perez**. Mr. Chairman, my name is Abelardo Perez. I am legal counsel for the National Association of Farmworker Organizations. I am here today pinchhitting for Mr. Frank Castellanos, who had to travel out of town on an emergency.

We would like to have our written testimony entered for the record, and I shall summarize it orally.

Senator **Simpson**. It will be so entered.

Mr. **Perez**. Thank you. I have given your staff additional materials, to which I will refer this afternoon.

Our organization has had a long history of involvement with immigration issues, particularly in the area of guest worker programs. We are very concerned about these programs because generally they seek to bring in farmworkers. This was so with the bracero program, it is true for the H–2 program, and it is the major or a major rationale for the administration's proposal on braceros.

OPPOSITION OF GUEST WORKER PROGRAMS

Such programs invariably have a devastating impact on the 5 million domestic migrants and seasonal farmworkers and their dependents. I will not catalog for this subcommittee the horror that is the life of a farmworker. Suffice it to say that conditions have not changed much since the documentary "Harvest of Shame."

In our written testimony we have set out reasons for opposing the guest worker programs. I would like to focus on one aspect.

We have always argued that any policies calling for a guest worker program must be based on logical and compelling reasons. For example, a guest worker program might be used to insure the protection of our national interest. This was done to some extent during the second war. No such condition exists now. Severe worker shortages might also compell a guest worker program. No such shortage exists for farmworkers.

On the contrary, the Federal Government's own data argue just the opposite. A logical and compelling reason exists for not bringing in guest workers. This is particularly true in the farm labor area. You have before you some charts prepared by the U.S. Department of Labor, presenting data on agricultural employment.

The top chart on the first page projects employment for the 1980's in various industries. The only industry in which there will be a decline in employment opportunities is in agriculture. The bottom chart projects employment changes in various occupational groups. There are two groups that will have a decline in employment: private household workers and farmworkers.

The top chart on the second page projects job openings. Again, there will be a decline in job openings for farmworkers. The bottom chart on the second page graphs agricultural employment between 1960 through 1990. As you can see, Senator, since 1960 farmwork employment has decreased by two-fifths, and it is expected to decline through the 1990's.

Some proponents of guest workers argue that U.S. farmworkers might have high unemployment rates during the nonharvest months, but that during the harvest months there are more jobs than farmworkers. This is not supported by Department of Labor data. On the third page before you a chart shows month-to-month unemployment rates for farmworkers. As you can see, even in the harvest months of June through September the unemployment rate for farmworkers is very high.

It is fair to say that for farmworkers their unemployment rate goes from very high during the harvest months to extremely high during the nonharvest months.

The Department of Labor projects that although farm job opportunities will decrease, there will be a need for 2.5 million farmworkers by 1990. The Department, however, also has statistics indicating that 2 years ago, in 1979, there were 3.7 million persons employed in farmwork. We assert that these 3.7 million workers are more than enough to fill the 2.5 million jobs that will be available, and there will be a 1.2 million farmworker surplus.

The above data are compelling in arguing against the guest worker program. There is just no need to bring in foreign workers for farm labor. It is crystal clear that job opportunities in agriculture will be decreasing. They have been decreasing in this country and in all industrialized countries since the 1950's.

For example, data show that agriculture, as a percent of the labor force, has been decreasing dramatically between 1950 and 1979. In this country in 1950 the percent was 11.2. In 1979 it is 3.3. In Canada in 1950 it was 19.7; in 1979 it was 5.2. In Britain it was 5.1 in 1950 and 2.4 in 1979. In West Germany, 22.9 in 1950 and 6.2 percent in 1979. Even in Mexico, in 1950 there was 57.8 percent of labor force in the farm area, and in 1979, 40.1.

This is a trend that will continue because of increased mechanization, sophisticated technology, and a breakthrough in genetic engineering.

Finally, a closing argument, we talk so much about free markets in this country; I think that the free market ought to determine capital and labor. Bringing in foreign workers is inconsistent with this free market spirit.

I thank you for your time. And I want to recognize the Senator's aggressive involvement in immigration matters.

Senator SIMPSON. Thank you, sir.

[The prepared statement of Mr. Castellanos presented by Mr. Perez follows:]

STATEMENT OF FRANCISCO CASTELLANOS PRESENTED BY ABELARDO PEREZ

Mr. [illegible]rman and Members of the Subcommittee:

I am Francisco Castellanos, National Representative of the National Association of Farmworker Organizations (NAFO). Incorporated in 1973, NAFO is a national membership organization, comprised of farmworker-governed, community-based organizations.

Throughout its eight years of operation, the Association has provided training and technical assistance to its members in a variety of programmatic areas which impact upon the lives of migrant and seasonal farmworkers and has initiated research and policy analyses on a wide range of issues which affect the civil and labor rights of our nation's farmworker population. On behalf of NAFO and its membership, I wish to thank the Subcommittee for requesting our comments today on an issue of such critical concern to the U.S. farmworking force.

NAFO's views on U.S. Immigration policy -- particularly, with respect to temporary worker programs -- is firmly rooted in the conviction that the labor rights of the U.S. farmworker population must be assured protection and, indeed, should receive priority in the development of national policy. NAFO has consistently opposed the creation of any temporary or guest worker program, believing that such a system inherently violates that premise and adversely affects the wages and working conditions of U.S. farmworkers and alien workers alike.

Labor Supply / Decline in Agricultural Employment

The only conceivable justification for a temporary worker program would be a true labor shortage, which this country has not experienced for many years. Certainly, the high unemployment figures for both the farmworker population and the U.S. population in general present no valid rationale for certifying temporary alien workers; on the contrary, they argue against such certification.

An alleged decline in the size of the nation's farmworker population has been promoted in recent years as a factor supporting the increased attention to the temporary worker concept. We do not believe that the longstanding debate regarding the actual size of the U.S. farmworker population is the real reason behind proposed temporary worker programs. However, because the issue is often raised, I would like to address it briefly.

As the Subcommittee is aware, the estimates of the size of the U.S. farmworker population range from approximately 250,000 to six million, depending upon which federal agency or farmworker advocate one cites. The fact of the matter is that no reliable data base exists for the population -- a problem which is created by the extreme difficulty in developing data collection procedures for a mobile population and compounded by the varying definitions, methodologies and surveying techniques used by the federal agencies which collect data on farmworkers.

Three of the five data services within the federal government which collect data on farmworkers (the Statistical Reporting Service (SRS), the Employment and Training Administration (ETA/DOL), and the Census of Agriculture) rely upon data which is obtained directly from the employer. The employer is requested to report the number of workers on the payroll during the survey period, thus, contributing to a data base which more accurately reflects a measure of agricultural employment available than the number of workers available for employment. Taking the point a step further, if these government figures suggest a decline in numbers, that decline may more appropriately suggest a decrease in the number of jobs available within agriculture.

The Occupational Outlook Handbook, published by the Department of Labor's Bureau of Labor Statistics suggests that such a decline in agricultural employment is the case. Of nine industries surveyed within the Handbook, only agriculture emerges as the single industry in which no growth in employment opportunities is projected during the 1980s. In fact, the Bureau of Labor Statistics goes further to project an actual decline of employment opportunities within the agricultural industry.

Changes within agriculture in the past two decades also suggest a decline in the jobs available -- advanced technology in mechanization, with its subsequent displacement of workers; the loss of over 3 million acres of U.S. farm land a year to erosion and urban development; and the growing number of small farm interests that simply close down operations.

A decline in employment opportunities available within agriculture do not support the need for a temporary worker program within the industry, but rather imply that a large number of U.S. farmworkers are looking for work. While NAFO has never attempted to develop and implement an accurate means of counting the U.S. farmworker population, nevertheless, we are convinced that U.S. workers are available.

- The majority of NAFO's members administer farmworker employment and training programs (CETA, title III, section 303). Last year employment and training services were provided to over 65,000 U.S. migrant and seasonal farmworkers -- 59% of whom were unemployed at the time of enrollment and 24% of whom were underemployed or working less than 32 hours per week (I might add that CETA requires proof of citizenship or legal alien status through eligibility verification of enrollees). In the first two quarters of the FY 1981 Program, over 58,000 migrant and seasonal farmworkers received similiar services.
- NAFO's own national emergency hotline receives between 1,000 and 2,000 calls each month from farmworkers throughout the country. While the NAFO hotline is not a job referral service, approximately 10% of the callers request just that. The overwhelming majority of the calls (approximately 60%) are from farmworkers requesting emergency transportation assistance -- i.e., gasoline and auto repair -- as they travel throughout the country looking for work.

H-2 Program

The H-2 Program, Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act is the current mechanism intended to help alleviate unusual domestic labor shortages during periods of exceptional production. The Act clearly indicates that the temporary alien workers are to be certified only " if unemployed persons capable of performing such service or labor cannot be found in this country."

We understand that the Subcommittee intends to hold separate hearings on the H-2 Program in the near future, so I will not address the U.S.' current temporary worker program in any detail today. However, I would like to mention that the H-2 Program, in our opinion, provides excellent rationale for not creating any temporary worker program. Among these reasons are:

1) Fiscal incentives exist within the program itself to encourage the use of temporary alien workers over the use of U.S. farmworkers. Employers can save approximately 10% in wage costs through exemptions on employer contributions to FICA. In many cases, this means the employer need not contribute to FICA for U.S. workers as well. The latter happens because, by statute, only large agricultural employers are covered by the unemployment compensation tax. The provision excluding foreign temporary workers from the definition of agricultural labor means that a large employer may then be counted as a small employer. Thus, U.S. workers employed in such circumstances will lose unemployment insurance protection.

2) The recruitment of available domestic workers is limited to determining the availability of U.S. workers available at an arbitrary wage rate and even then does not necessarily preclude the hiring of the alien worker over the U.S. worker. The 1978 East Coast Apple Harvest is the program's most visible failure in recruiting available U.S. workers over aliens -- 2,000 U.S. workers were present and promised jobs during the harvest, only to be fired within their first week of employment and replaced by temporary alien workers.

3) The H-2 Program's adverse effect wage rate has itself caused an adverse affect upon the wages of U.S, workers. Comparisons of the prevailing wage rates in states which employ H-2 workers and those states which do not employ the temporary alien workers, illustrate that wages are depressed for all workers in those states which routinely use the H-2 worker. Instead of protecting the U.S. workers' earnings ability, the adverse effect wage rate methodology tends to act as a ceiling on all wages.

Temporary Worker Programs as a Means of Immigration Control

Lessons from the European Guest Worker Experience, the U.S./Mexico Bracero Program and the current H-2 Program illustrate that temporary worker programs neither eliminate nor control patterns of illegal immigration. On the contrary, temporary worker programs perpetuate both the preference of industry within the host country to use the cheaper, more docile alien laborer *and* the desire of the guest worker to remain in the host country for the very economic reasons which prompted the worker to leave his or her country in the first place.

The United States' regrettable experience in the Bracero Program perhaps best illustrates this point. Hundreds of thousands of Mexican citizens were welcomed into the U.S. as supplemental labor for our nation during World War I. However, the use of Mexican labor did not cease during the years in which the labor shortage subsided. And during the Depression, increased border patrol raids and other means of enforcement were used to expel approximately 500,000 workers through the "repatriation campaign," half of whom were reported to be U.S. citizens of Mexican descent.

Again, during World War II, the U.S. welcomed Mexican nationals into the country to fill a labor shortage caused by war. And again, following the nation's return to a peace time economy and a growing concern regarding the presence of Mexican workers in our country, "Operation Wetback" was launched, expelling more than one million persons.

The Proposed Reagan Administration Plan

NAFO does not support the proposed temporary worker program within the Reagan Administration's Immigration Proposal for the same reasons we are opposed to all temporary worker programs --

- there is no real labor shortage in the U.S.;
- temporary worker programs serve to depress the wages and working conditions of the U.S. labor force; and
- temporary worker programs serve to develop a dependence for the more docile, alien worker and postpone the need for the user industry to revise its employment practices.

An inherent by-product of temporary worker programs is the creation of a sub-class of workers who do not enjoy similiar social, economic or political rights as do citizens within the host country. Particularly troublesome within the Reagan proposal is an apparent strata of varying sub-classes within agriccultural labor, revolving around the issues of right to work and job prefernce. American workers are presumed to have job preference over the temporary guest worker. However, in farm labor, the issue of job preference is not easily implemented. In determining a state's agricultural labor supply needs, U.S. farmworkers who are residents of the state would be the most easily identifiable as priority candidates for employment. However, are U.S. migrant farmworkers (whose permanent residence is outside of the state in question) to be considered within certification of an individual state's labor supply? Are the "temporary term residents" to be considered American workers for the purposes of determining labor needs? Are Cuban and Haitian refugees to be considered in determining labor supply? And does prefernce exist between the temporary guest worker from Mexico and the Carribean worker of the H-2 Program?

Moreover, the Reagan Administration's temporary worker program, as outlined to date, does not vary from the major components of the Bracero Program nor the West German Guest Worker Program -- two temporary worker programs widely recognized as failures. (See Attached Comparison of the Bracero Program, West German Program and the Reagan Administration Plan on the next Page).

	Bracero Program	West German Program	Reagan Administration Plan
Nature of Contract	U.S. Employers/Workers	W. German Employers/Workers	Unknown
Allowed Stay	2 - 6 month period	Permit up to one (1) year; with two (2) year renewable; unconditional permit after eight (8) years; permanent after eight (8) years	Allows stays for up to 9 - 12 months
Family Reunification	Families not allowed	Family reunion allowed after one (1) year	Families (spouses & children) will remain in Mexico
Access to Public Assistance Support	No provision	Generally, social services were available	Health care available;No welfare, food stamps or unemployment insurance
Numbers Allowed	Unspecified Number	Unspecified Number	Up to 50,000 per annum
Wages & Working Conditions	The hiring of such workers shall not adversely affect the wages & working conditions of domestic workers simiiarly employed	No wage provisions	Normal wage & working standards apply, but alien workers not eligible for UnEm. Insurance
Certification	ES certification of need & unavailability of U.S. workers	No certification provisions	Exclusion of jobs where states certify that an adequate supply of labor exists
Administering Agency	Department of Agriculture	Department of Labor	Unknown
Legal Authority	Agreements & Public Law	Federal statutes	Federal Statute

International Concerns

NAFO recognizes that all temporary worker programs have international implications and ramifications.* Consequently, migrant and seasonal farmworkers and the organizations which represent them have had a long history of looking at this aspect of immigration. NAFO, for example, belongs to the U.S. Hispanic - Mexico Commission; a commission which has met several times with President Jose Lopez Portillo of Mexico. At these meetings, NAFO articulated its views on temporary worker programs.

It is important to note that in the abstract NAFO does not argue with the concept of a country using a temporary worker program as a tool of foreign policy. In a war situation -- where a true labor shortage exists within a country -- national security might depend on the use of alien workers in agriculture and other industries. To some extent this was the case when the U.S. imported Mexican workers for agricultural work during World War II.

Notwithstanding compelling reasons for such programs, however, the practical effects of the programs can be extremely damaging to resident farmworkers specifically and the country generally. In addition, the sending country also suffers. While these results might be tolerable in a national emergency, they should not be tolerated in peace time.

Experience has shown that temporary worker programs lead to stress between the receiving and sending countries. For example, a commentator wrote that, "No postwar United States policy has so incensed and humiliated the Mexican public as did the foray (of the U.S. government) into the unilateral bracero contracting in 1954." (Richard Craig, The Bracero Program, Interest Groups and Foreign Policy, University of Texas Press, 1971, p.118). In Europe, the millions of guestworkers who travelled from Southern Europe to Northern Europe have caused the citizens in the receiving countries to lash out against these workers. As the Congressional Research Service concluded in a study done for the Senate Judiciary Committee:

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* As a matter of fact, we have been informed by several federal officials that President Reagan's temporary worker proposal is based on foreign policy considerations.

> The presence of large numbers of foreigners also gave rise to serious social and political tensions. The emergence of racial conflict was one of these. Concerns about overforeignation ... led to several national referenda on the subject of expelling immigrants.
> (Committee on the Judiciary, U.S. Senate, Temporary Worker Programs: Background and Issues, 96th Congress, 2nd Session, February 1980, p. 97).

We can fairly well conclude that another attempt by the United States to bring in Mexican guestworkers will lead to the same results. That is while the initial reaction might be favorable, in the long run the initial glow will turn to bitterness and recrimination. This issue was raised by Mexican Ambassador Hugo Margain when he recently stated, "We don't want our people exploited here, ... and you don't want this." (Mexico-United States Relations," Report of a Wingspread Symposium, the Johnson Foundation, Racine, Wisconsin, March, 1979, p. 12).

This concern was echoed by Mr. Luigi R. Enaudi from the U.S. State Department. He felt that "no other issue in our bilateral relations (with Mexico) is as difficult or emotion laden" (Wingspread Symposium, p. 10).

It is also evident that the sending country is concerned about spending money to rear workers who go to work in another country. This loss of manpower has a major impact on the economic evolution of the sending country.

Soon,Mexico will be the U.S.' largest trade partner. In one year (1977 - 1978) U.S. - Mexico trade increased 34% ($9.5 billion to $12.7 billion). This trade will increase. Mexico has a legitimate interest in assuring that its workers stay home to supply its own industrial and agricultural production base. Several commentators at the Wingspread Symposium stressed this, asserting that it was an imposition on Mexico to have millions of its workers leave their country. They also saw it as a large "brain and muscle drain", something Mexico could not afford. The point was made that the Mexicans that came to the U.S. were the people with a strong desire to work; those with less of a desire to work stayed in Mexico. Ambassador Margain reinforced this perspective saying, "We will develop Mexico and we will produce jobs. We don't want to lose an important part of our labor force" (Wingspread Symposium, p. 11).

Since there is no need to bring workers from Mexico to work in agriculture, and since Mexico needs to keep these hard workers in Mexico to supply its production base, it is clear that U.S.-Mexico foreign relations can best be advanced by economic development in Mexico. Bringing in thousands of Mexican braceros to work in the fields, to be exploited and to compete with a farm labor force here that already suffers, does absolutely nothing to promote good will between Mexico and the United States.

Conclusion

The employment system within agriculture is a casual system. A national labor force largely assumes the burden of spending a large part of their time and own resources in seeking employment in localized, seasonal work. The working conditions and wages within U.S. agriculture are representative of that casual system as well -- perhaps, best evidenced by such basic examples as the complete lack of field sanitation standards and the average earnings of its employees (The Hired Farmworking Force of 1979 by the Economic Research Service of USDA reports that the average earnings for workers employed in farm labor for 250 days and over is $2,489).

Undocumented workers travel to the U.S. because of the precedence established in obtaining employment. Their presence, in turn, perpetuates the casual system of employment within agriculture and other industries where they obtain work.

NAFO does not suggest that the nation's immigration problems are simple, requiring single solutions. However, we do suggest that this casual system of employment within agriculture is at the root of the immigration problems connected with the industry. And that until incentives no longer exist in hiring the undocumented worker or the temporary alien worker, those immigration problems will continue.

We recommend that this Subcommittee encourage the Congress and the Administration to focus their attention on a long overdue policy for agricultural employment -- seeking means to stabilize the work force and the employment system. We are convinced that such an approach will better serve the industry and the U.S. labor force, as well as bring a new approach to solving the nation's immigration problems.

Thank you for your consideration.

TEMPORARY FOREIGN WORKER PROGRAMS:

A RESPONSE TO THE SELECT COMMISSION RECOMMENDATIONS

American Friends Service Committee
Domingo Gonzalez
Aurora Camacho de Schmidt

League of United Latin American
Citizens
Arnold Torres

National Association of Farmworker
Organizations
Sandy Harding

Jesuit Office of Social Ministries
Marie Hellinger

Zero Population Growth
Phyllis Eisen

Migrant Legal Action Program
Michael Semler
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Mexican-American Legal Defense
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U.S. Catholic Conference
Secretariate for Hispanic Affairs
Pablo Sedillo

Office for Church in Society
United Church of Christ
Ralph Watkins

National Council of La Raza
Frank Garza

Association of Farmworker
Opportunity Programs
Diane Mull

May 20, 1981

INTRODUCTION

This paper expresses in summary form the reaction of several Hispanic, farmworker, religious, and public interest organizations to the Select Commission's conclusions concerning temporary foreign worker programs. Most of our organizations have developed position papers setting out their particular perspectives on a wide range of immigration issues. However, we feel that the immigration problems facing this country are too important and too complex to be approached from a single perspective. Consequently, during the last six months we have been working through the National Forum On Immigration and Refugee Policy to develop joint positions on several particularly pressing issues. This process has involved the preparation, circulation, discussion, and revision of position papers among approximately fifty organizations participating in the National Forum. The following paper on temporary foreign workers is one of the products of this effort.

The Select Commission addressed two fundamental questions concerning temporary foreign labor: (i) should the United States establish a large-scale temporary worker program, possibly similar to the European "guestworker" programs, and (ii) if not, should the United States continue to admit contract workers under the H-2 program. The Select Commission correctly dealt with these as separate issues and they are considered separately here.

I. "GUESTWORKER" PROGRAMS

The Select Commission recommended against any large-scale temporary worker program. [1/] We strongly support this recommendation. A large-scale temporary labor program would fail to achieve its intended goals while undermining many of our most important social values.

1. Temporary Labor Programs Do Not Eliminate Or Control Illegal Immigration

The temporary foreign worker programs are vehicles for the admission of certain workers, not for the exclusion of others. Absent other comprehensive and effective controls a large-scale program involving Mexican workers would almost certainly increase rather than decrease illegal immigration.

A large-scale temporary worker program is likely to increase the number of Mexican workers wanting to work in the United States. Mexican nationals now coming to this country illegally are only a small fraction of those eager for employment in the U.S. A government program offering an opportunity to travel legally to the U.S. for any type of employment would attract new workers, gradually multiplying the number of Mexican workers interested in traveling north. Unless the temporary labor program were constantly expanded, increased illegal immigration would result. The United States suffered exactly this experience as a result of the Bracero Program. The World War II foreign labor program introduced hundreds of thousands of Mexican workers to the U.S. economy and to the ease of illegal entry. When the number of interested workers rose faster than the number recruited through the Bracero Program, these "experienced" workers entered illegally. [2/]

2. A Temporary Worker Program Would Displace U.S. Workers and Depress U.S. Working Conditions

Under the H-2 program foreign workers can be admitted only when it is determined that U.S. workers are not available. While this program is seriously flawed, it at least makes an effort to avoid displacement of U.S. workers and depression of working conditions by (i) requiring DOL "certification" before admission and (ii) tying the worker to a single job. Many "guestworker" programs (e.g. the "United States - Mexico Good Neighbor Act of 1981" proposed by Senator Schmitt) do not include these protections. No effort is made to determine whether U.S. workers are interested in the available work or to limit the alien to employment only where there is a demonstrated labor shortage. Such a guestworker program would inevitably lead to both competition between the aliens and low-skilled U.S. workers and the stagnation of U.S. working conditions in many segments of the economy. Indeed, the primary reason there is a perceived "need" for foreign workers among certain employers is the reluctance to improve existing wages and working conditions:

> [E]mployers never seek such programs unless they will reduce labor costs, although some of these costs may be noneconomic ones, in that the foreign workers are deemed to be easier than domestic workers to control. Mass nonimmigrant worker programs tend to have a heavy, depressant impact on microlabor markets; employers stop competing for resident workers, and the nature of the work tends to freeze... " (emphasis added). 3/

3. Guestworkers Tend To Remain Permanently, Regardless of The Original Intent Of The Program

The basic assumption underlying a guestworker program is that the aliens can be admitted in times of labor shortage and removed or excluded in periods of recession. The European experience has shown that this assumption is incorrect. Up to 50% of the guestworkers admitted in the European programs have remained more than 5 years in the host country, regardless of the measures taken to encourage the workers to depart. 4/ Once foreign workers are admitted employers aggressively resist not only the reduction of the number of foreign workers but also any effort to rotate the jobs among various foreign workers. Similarly, other elements in the host society - e.g. church groups, civil rights organizations, and labor unions representing the new workforce - actively resist any effort to remove individual workers. As a result the foreign workers remain in the host society, form families, and become *de facto* immigrants rather than temporary workers - but without the full rights and privileges of citizens. It is thus fallacious and misleading to treat these guestworker programs as though they were not in fact a form of permanent immigration.

4. Temporary Labor Programs Postpone Wage And Labor Market Restructuring

The perceived need for foreign labor arises from the failure of wage scales and other job benefits in certain sectors to move as quickly as in the national economy as whole. This problem can be addressed in a variety of ways, including (i) increasing and redistributing the effective labor supply by changes in the wage structure and (ii) decreasing the need for labor by mechanization, increased capital investment, innovation and the transfer of labor-intensive industry to labor-supply areas. Although often initially painful in terms of individual dislocations, these changes would address the fundamental cause of the perceived domestic labor shortage. Temporary labor programs treat only the immediate symptoms, allowing the necessary labor market restructuring to be postponed. "Importing foreign workers does not solve domestic labor market problems, it merely postpones the need to deal with them". 5/

5. Temporary Labor Programs Are Self-Perpetuating

Once a tempoary labor program has been initiated it becomes difficult or impossible ever to free the host nation from dependence on foreign workers. This is in part an economic phenonenom: employers and governments reluctant to restructure domestic labor markets to attract domestic workers become even more reluctant to begin this restructuring once foreign workers have provided a temporary "quick fix":

> The fundamental "cause" of foreign worker permanence is the persistance of employer "needs" for foreign workers. The proximate cause of this "persisting need" is the choice to import labor rather than restructure labor markets. If not done before migrants are imported, it will continue to prove "too costly" to adjust labor markets at some future date. 6/

This of course perpetuates the need for new foreign workers as the initial workers settle permanently in the host country and begin to secure jobs in other sectors of the economy.

Social factors also make guestworker programs self-perpetuating. As certain jobs come to be identified with foreign workers the indigenous population will no longer accept these jobs, regardless of the benefits offered. The European experience was that this process left the host countries even more dependent on foreign labor:

> Large numbers of guestworkers changed the socio-economic milieu of labor-receiving nations. Since labor was available, employers had little incentive to upgrade low-level jobs. Instead of filling temporary labor market gaps, natives began deserting "guestworker occupations," increasing the need for foreign workers. 7/

Both the Bracero Program and the current H-2 program illustrate that these dynamics apply in the United States as well as in Europe. Many agricultural employers have never taken the painful steps necessary to free themselves from the dependence on foreign labor first developed during World War II. A large-scale guestworker program would aggravate this situation in agriculture and introduce this problem across the economy as a whole.

6. Temporary Labor Programs Impose Severe Long-Term Financial Burdens On The Host Countries

The economic benefits to employers from an increase in the labor supply are immediate, while the social-economic costs to the society as a whole become apparent only over time. The European experience has shown that as guestworkers remain in the host countries they make increasing demands for general social services and also for a social infrastructure (e.g. in the areas of housing, education, and health care) which is specifically designed to serve the foreign workforce. This is particularly true in relation to the children of the "permanent" guestworkers, who often have little or no contact with their parents' homeland and resist restrictions which attempt to limit them to the same low-skill positions held by their parents.

7. Temporary Labor Programs Improperly Delegate To Employers The Selection Of New Immigrants

Central to our immigration law is the preference system, which serves to identify those aliens to be admitted for permanent residence in the United States. A large-scale temporary worker program would by-pass the preference system and place this decision solely in the hands of employers. By setting the job qualifications and making the hiring decisions employers would in fact control the sex, age, experience, and skill level of the entering guestworkers, a large percentage of whom would in fact become permanent residents.

8. Temporary Labor Programs Generate Intense Social and Political Instability

Because many guestworkers inevitably remain in the host countries, these programs quickly produce an internal "subclass" which is legally present but nevertheless denied the full rights of citizenship. Although integrated into the workplace, these workers are not integrated into the overall social fabric of the society and cannot take part in the public life of their *de facto* home. Disparities between citizens and "permanent guestworkers" have created very serious social and political problems in European nations, leading to racial, ethnic, and class prejudice and to outbreaks of violence.

Since the mid-1970's the European nations have moved to correct this problem by *ending* the admission of new guestworkers and attempting to integrate the 5 million remaining guestworkers (and their dependents) into the mainstream of society. These countries have found that the maintenance of a guestworker "subclass" is consistent with neither concern for individual rights nor the long-term social and economic welfare of the country as a whole. We strongly believe that the United States must take this same position. The existing flow of illegal immigration does indeed create serious economic, social and personal dislocations in this country and in the sending countries. However, a temporary foreign worker program would only exacerbate and perpetuate these hardships by further stratifying the society and reducing the incentives to make the necessary long-term changes. We believe that all persons admitted to this country for employment must be accorded permanent resident status. This should be accomplished through expansion of the immigration quotas.

9. Whether There Is A Need For A Guestworker Program Cannot Be Determined Until Other Aspects Of U.S. Immigration Policy Have Been Resolved

Quite apart from the foregoing arguments it is clear that now is exactly the wrong time to adopt a large-scale temporary foreign worker program, for other changes in immigration law may drastically change the number of workers available for employment in the United States. The Select Commission has recommended a legalization program which will result in permanent residence for hundreds of thousands of aliens currently coming to the U.S. for employment. If the "cut-off date" is sufficiently long (e.g. five years from the date of the legislation), this number could rise to several million. Similarly, the Select Commission made recommendations concerning refugee policy which could greatly increase the number of persons admitted to the United States as refugees or persons seeking asylum. Most of these persons would likewise enter the U.S. job market. Much the same can be said of the Commission's recommendations as to increasing the ceilings on immigrant admissions pursuant to the goal of family reunification. Moreover, until illegal immigration is controlled there can be no meaningful measurement of the need for a tempoporary labor program and no effective enforcement of such a program were it to be established. For these reasons we strongly believe that the Select Commission was correct in concluding that Congress should not even begin consideration of a large-scale temporary foreign worker program until the other major elements of U.S. immigration policy have been established.

II. THE H-2 PROGRAM

The Select Commission recommended that the H-2 program be continued, with several revisions. [8] Set out below are our comments (A) opposing the continuation of the H-2 program and (B) evaluating the revisions suggested by the Select Commission.

A. The H-2 Program Should Be Terminated

We believe that there is no justification for continuation of the H-2 program. What was intended as an emergency program open to all employers for the purpose of dealing with unexpected labor shortages has become a routine source of labor for a small number of favored agricultural employers. [9] The only true issue in this area is that of employment standards, not availability. The Eastern apple growers, the Florida sugarcane producers, and other H-2 users could satisfy their labor needs with workers already in this country if their wages and working standards were brought up to 20th century standards. [10]

H-2 users sometimes argue that U.S. workers are physically unable to perform strenuous outdoor manual labor. Yet thousands of U.S. farmworkers labor for months at a time in fields throughout this country. Picking apples is not significantly different from picking grapefruit, oranges, lemons, peaches, pears and many of the other crops now harvested by U.S. workers. U.S. workers who have not worked in "tree crops" could certainly learn to pick apples (which is classified as "unskilled" work) if provided a few days of supervision.

Employers also claim that U.S. workers will no longer work in agriculture because they can earn as much on welfare. While farmworkers have recently been provided some of the benefits long available to other workers, this means only that agricultural employers, like all other employers, must now offer an opportunity to earn more than the pittance which could be obtained through public benefits. The H-2 program is an attempt to circumvent this fact of modern economic life. Through the H-2 program employers are trying to reach back to an earlier era, recruiting workers willing to work on terms far below current U.S. standards.

Growers also defend the H-2 program on the ground that it protects the consumer against increased fruit and vegetable costs. However, the field labor component in the price of produce in the supermarkets is extremely small (less than 1¢ per pound in the case of the Northeastern apple harvest). Moreover, savings to the consumer are more theoretical than real in those crops where H-2 users produce only a fraction of the regional or national supply. An employer using H-2 workers in this context simply continues to sell his produce at the going rate, pocketing any saved labor costs.

While the public benefits little or not at all from the H-2 program, U.S. farmworkers are being excluded from available jobs and blocked from improving their working conditions. Yet lacking union representation and significant political power, farmworkers cannot protect themselves. The H-2 program thus both reflects and perpetuates the special powerlessness of U.S. farmworkers.

The H-2 program should be phased out over a five year period. No new certification applications should be accepted from growers who have not been using foreign workers. Growers who have relied on foreign workers should be required to phase out the H-2 workers at the rate of 20% per year. This procedure would allow the affected growers to gradually shift to a U.S. workforce by raising wages, improving working conditions, and undertaking more aggressive recruitment. All access to foreign contract workers in agriculture should end in five years. 11/

B. The Revisions Suggested By The Select Commission

The Select Commission made four recommendations as to the future operation of the H-2 program:

1. "Streamlining The Application Process"

The Select Commission recommended that DOL should "improve the timeliness of decisions regarding the admission of H-2 workers by streamlining the application process." Concern with improving the "timeliness" of H-2 certification decisions addresses a real flaw in the existing system. However, "streamlining" the recruitment process is the wrong solution, for there is already very little time for actual recruitment of domestic workers. 12/ The focal point of reform should be to begin recruitment earlier, while U.S. migrants can still be reached in the "homebase" states, and to ensure that the various decisions in the certification process are made without delay. The regulations should be amended to set out a timetable which provides that the clearance order must be filed 6 months before the harvest and that DOL must formally accept or reject the order within 2 weeks of submission. These and similar requirements would ensure that the clearance order would be either displayed to U.S. workers or brought before the courts several months before the harvest, thus ending the lengthy negotiations at the administrative level which have frustrated domestic recruitment.

2. Removing The Current Economic Disincentives To Hiring U.S. Workers

We strongly agree with the Commission's recommendation that the current economic disincentives to hiring U.S. workers should be eliminated, although it seems likely that this action will have to come from Congress rather than DOL.

Employers should not be permitted to keep for themselves the 6.65% employer social security contributions, for this is an employment benefit that the contract workers have earned. FICA taxes should be paid by the employer and by the contract workers just as in the case of U.S. workers, but this money should be gathered in a special fund and paid to the workers upon their return to their country. Under this arrangement employers would pay the same FICA taxes for both

U.S. and foreign workers and all workers would receive the same compensation during actual employment.

Congress should also eliminate the exemption in the unemployment insurance tax for wages paid to H-2 workers. The UI system rests on the theory that all businesses benefit from the maintenance of stable consumer purchasing power among the temporarily unemployed. As producers for the primary market, fruit and vegetable growers benefit directly from this maintenance of consumer demand. Moreover, by hiring foreign workers rather than local U.S. workers, these growers directly contribute to any unemployment in their area. Surely it is unfair that these growers are the only employers exempted from sharing in the resultant increase in unemployment insurance payments.

3. Retain The Labor Certification by DOL

We also strongly agree with the Commission's recommendation that the DOL labor certification requirement be maintained. Indeed, we would go further and recommend that DOL certification be mandatory rather than advisory. If contract workers are to be admitted only when U.S. workers are not available, the government must be able to successfully defend its finding on "availability". The certification program can best be strengthened by ending the ambiguous participation of the INS in this decision. Only DOL has the expertise, the mechanism, and the institutional perspective to determine whether U.S. workers are available and what terms must be offered to avoid an adverse effect on similar employment. 13/

4. End Dependence On A Constant Supply Of H-2 Workers

We also support the Commission's conclusion that government, employers, and unions should cooperate to end the dependence of any industry on a constant supply of H-2 workers. For the reasons suggested briefly above and discussed in detail elsewhere, 14/ we believe that the regular use of foreign contract workers under the H-2 program is contrary to the best social and economic interests of this country.

5. "Slight Expansion"

The Select Commission did not recommend any expansion of the H-2 program. However, as the final item in its recommendations the Commission noted that the "above does not exclude a slight expansion of the program." The basic principle underlying the H-2 program is that no foreign workers should be admitted unless U.S. workers cannot be located for the particular job at issue. To determine the number of H-2 workers apart from the certification process is inimical to Section 101(a)(15)(h)(ii). We believe the Commission was in error in making this comment and, if the H-2 program is to be continued, that it would be improper to attempt to set the size of this program in advance. If the DOL certification process is to be retained, as the Commission suggested and as we urge, it is that process which must determine the size of the H-2 program.

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1. *U.S. Immigration Policy and The National Interest: The Final Report And Recommendations Of The Select Commission On Immigration and Refugee Policy* 42-45 (March 1, 1980).

2. Congressional Research Service, 96th Congress, 2nd Session, *Temporary Worker Programs: Background and Issues*, 26 (February, 1980). *See also 21 Law and Contemporary Problems* 335, 343-344 (1956).

3. *Manpower and Immigration Policies In The United States*, National Commission for Manpower Policy, *No. 20*, 215, (February, 1978).

4. Phillip L. Martin, *Guestworker Programs: Lessons From Europe*, 24 (Joint Economic Committee, U.S. Congress, June, 1979)

5. Id. 49.

6. Id.

7. Id. 59.

8. Select Commission Report, 226-231.

9. Although open to all employers, the H-2 program has had its greatest impact in agriculture. Only in agriculture are H-2 workers admitted *en mass* to become a major segment of the local workforce.

10. See Michael P. Griffing, *Impact Of The Adverse Effect Wage Rate On The Domestic Farm Labor Market: A Theoretical Discussion*, (Washington, D.C. Bureau of Social Science Research, July, 1976).

11. The Office For Church In Society of the United Church of Christ has not yet entered a formal resolution in opposition to the H-2 program, but fully endorses the criticisms voiced in this paper.

12. The current H-2 regulations, 20 C.F.R. § 655.201(c), require that the job offer be filed in time to allow 60 days of domestic recruitment. In fact, however, foreign workers are routinely certified when the job offers have been available to U.S. workers in the local employment service office for only a few weeks.

13. An analogous change was made fifteen years ago to strengthen the role of DOL in the certification provision governing the admission of *immigrant* laborers. When first enacted § 212(a)(14) provided that aliens could be admitted for permanent employment unless DOL intervened in the proceedings to oppose the admission. DOL's authority was largely meaningless because there was no requirement that DOL be informed of the petitions as they were filed. Section 212 was amended in 1965 by reversing the presumption, thus conditioning entry on DOL certification.

14. The flaws in the H-2 program are set out in detail in the submission of the Migrant Legal Action Program and other legal services attorneys to the Select Commission in November, 1980. Copies of that paper are available from Michael Semler at the Migrant Legal Action Program (347-5100).

U.S. DEPT. OF LABOR

UNEMPLOYMENT RATE FARM LABORERS AND SUPERVISORS

	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	ANNUAL AVERAGE
ORIGINAL													
1968	6.2	5.2	6.0	4.7	2.7	4.4	3.7	4.0	3.9	3.5	3.2	5.1	4.3
1969	5.2	4.2	5.9	4.1	2.1	3.4	4.6	3.3	3.7	3.2	4.0	6.3	4.0
1970	6.8	6.2	6.4	4.4	4.3	3.6	4.1	4.7	7.3	5.3	6.2	8.8	5.4
1971	9.2	8.7	6.5	3.8	2.4	3.6	4.7	4.9	5.5	3.7	7.3	7.7	5.4
1972	9.2	8.0	5.5	4.7	3.3	4.3	3.8	4.0	5.8	5.6	7.2	6.9	5.5
1973	8.0	7.3	5.8	5.8	4.4	4.2	3.1	4.7	5.2	4.3	6.3	6.9	5.3
1974	6.0	5.9	6.4	4.9	2.9	4.0	4.7	4.8	5.0	4.4	6.5	6.8	5.1
1975	10.5	8.7	9.6	8.2	4.4	5.3	4.5	6.6	6.8	6.2	9.8	11.7	7.3
1976	11.8	10.0	11.5	9.4	6.6	6.6	6.7	6.4	7.0	6.8	12.4	15.8	8.9
1977	13.1	16.1	13.7	10.2	5.9	7.3	5.8	6.2	8.0	6.7	9.8	11.2	9.0
1978	10.9	12.0	12.3	7.0	4.9	4.9	5.5	5.3	6.8	7.2	7.9	9.6	7.5
1979	7.8	11.0	9.1	7.5	4.7	4.6	6.6	5.5	7.6	6.8	10.7	12.0	7.6
1980	11.4	12.1	11.0	10.6	6.5	5.9	7.2	8.7	8.6	7.5	9.8	11.4	8.9
1981	12.5.	15.2.	14.1.	8.2.	7.6.	8.1.	7.2.	8.5.	7.2				
SEASONALLY ADJUSTED													
1958	5.8	8.2	7.8	8.1	6.5	6.7	5.9	6.0	6.8	5.4	5.0	5.0	-
1959	5.5	6.5	5.1	4.3	4.5	4.6	6.5	6.8	4.5	5.2	5.5	5.1	-
1960	4.6	4.7	7.3	4.9	5.2	5.8	5.3	4.9	4.6	6.0	5.3	6.7	-
1961	5.9	5.9	6.2	6.5	6.8	5.5	5.3	5.0	5.7	4.7	4.5	5.4	-
1962	5.6	4.2	3.6	5.1	4.7	3.5	3.9	4.4	4.6	4.5	5.4	5.3	-
1963	5.6	8.2	5.5	4.7	5.5	6.5	7.1	6.1	5.5	3.7	6.1	5.1	-
1964	6.3	6.0	7.4	6.6	4.9	6.8	5.8	6.3	5.3	5.3	5.6	6.2	-
1965	4.7	5.9	5.5	5.3	5.2	4.9	5.3	4.8	5.0	5.1	5.9	5.3	-
1966	4.8	5.3	4.8	4.4	6.7	3.7	2.5	4.4	4.1	4.1	4.1	3.8	-
1967	5.0	6.8	4.5	5.0	5.2	4.9	4.4	3.9	4.9	4.9	5.7	3.7	-
1968	4.3	4.0	4.6	4.7	4.5	5.1	4.6	4.8	4.1	4.0	2.8	3.7	-
1969	3.5	3.1	4.6	4.2	3.5	4.0	5.7	3.9	3.9	3.7	3.4	4.5	-
1970	4.5	4.6	5.1	4.7	7.5	4.4	5.1	5.5	7.4	6.0	5.2	6.3	-
1971	6.0	6.3	5.3	4.0	4.1	4.5	5.9	5.6	5.6	4.3	6.2	5.6	-
1972	6.0	5.7	4.5	4.9	4.9	5.6	4.8	4.6	5.9	6.8	6.0	5.0	-
1973	5.3	5.4	4.7	5.9	6.7	5.4	4.1	5.5	5.4	5.3	5.1	5.0	-
1974	4.2	4.3	5.0	4.7	4.6	5.2	6.5	5.7	5.4	5.5	5.2	5.0	-
1975	7.6	6.3	7.2	7.6	6.9	6.9	6.1	8.1	7.5	7.8	7.9	8.6	-
1976	8.8	7.0	8.4	8.6	9.6	8.9	9.2	8.0	7.8	8.5	10.2	11.4	-
1977	9.8	11.1	10.1	9.3	8.7	10.3	7.7	8.1	8.7	8.4	8.0	7.9	-
1978	8.2	7.9	9.0	6.3	7.2	7.1	7.3	7.1	7.3	8.8	6.5	6.7	-
1979	5.8	7.1	6.7	6.0	7.0	6.9	8.6	7.4	8.0	8.3	9.1	8.5	-
1980	8.8	7.8	8.3	9.7	9.7	9.0	9.3	11.6	9.0	8.9	8.1	8.1	-
(1981)	9.7.	9.8.	10.7.	7.5.	11.2	12.3	8.9	11.3.	7.9.				

Senator **Simpson**. Next, please, Peter Allstrom.

STATEMENT OF PETER ALLSTROM, DIRECTOR OF RESEARCH, FOOD AND BEVERAGE TRADES DEPARTMENT, AFL-CIO

Mr. **Allstrom**. My name is Peter Allstrom. We also have submitted a statement for the record.

Senator **Simpson**. Without objection.

Mr. **Allstrom**. Thank you.

I am director of research for the Food and Beverage Trades Department. We represent about 13 unions and 3.2 million members. Many of those members are greatly disadvantaged by illegal immigration. We certainly support a national immigration policy, but we do not think that a large temporary guest worker program deserves a place in that package. It would be a grave mistake.

EFFECTS OF ILLEGAL IMMIGRATION

Most arguments favoring temporary worker programs talk about, at great length, the supposed need for these people. It is believed, apparently, that capable U.S. citizens are in short supply. Yet, unemployment among our people has increased to 7.5 percent. In certain youth and minority groups, unemployment is much higher, touching 40 percent in precisely those populations most likely to compete with the imported workers.

Moreover, after so many anthems of market forces this year, this guest worker proposal is a little bit confusing. This administration, so dedicated to free market mechanisms where laws to protect consumers, workers, and environment are concerned, would evidently interfere on a massive basis when it comes to the wages of working people.

From my reading of supply and demand, it is suggested that if we lack labor in any region or occupation, wages and working conditions should improve until the necessary people show up. It does not seem fair for Government to change the rules by importing literally tens of thousands, potentially hundreds of thousands of foreign workers.

Part of the cost, of course, is paid by those workers who would otherwise find a job at decent conditions and decent pay. But part is paid by all of us as consumers. When employers and Government conspire to depress wage levels in place of an incentive to improve efficiency, they enjoy a subsidy underwritten by the taxpayers, consumers, and the workers less able to pay.

There are, in this proposal, official guarantees which in theory assure full coverage under the laws protecting worker rights. In practice, however, the limited tenure of guest workers prevents enforcement of certain, often the most important, labor laws. A company can tie the Wagner Act in knots if it is determined to do so. The cost to the average citizen is bad enough. To someone on a 12-month visa, it is everything. Justice delayed is simply justice denied.

In the absence of diplomatic support for this proposal, there also are disturbing factors. There is almost a total lack of enthusiasm among leaders of the Mexican Government, as testified to in the House.

There is also real reason to doubt the ability of our consular staff to handle the increased volume of visas. Presumably guest workers would make a positive contribution to our relations with Mexico. But the spectacle of exploited compatriots would seem to excite as much tension as admiration on the border.

Proponents have always tried to explain their programs as some sort of alternative or an answer to illegal immigration. But during the bracero program, as shown by academic studies, commission and staff reports lately, illegal immigration actually increased during that program. If guest workers pose one problem for enforcement, the idea is equally confusing in terms of amnesty.

The administration proposes a legalization program for some undocumented workers. It, too, has grave deficiencies, but it does propose to legalize a large group of people. Unfortunately, as is the case with most other questions in this area, we do not know how many.

We do not know how high their unemployment rates are. We do not know how many families will eventually be joining these people in the labor force. And we do not know what our own labor force requirements are going to be only 5 years from now. Yet, in the middle of this fog, we are asked to discern a long-term need for additional foreign workers.

Perhaps the most astonishing thing, though, about this new proposal is we have seen it fail drastically before. The bracero program is a prime example of all that can go wrong with large-scale temporary worker programs.

To explain those issues, I have appended two pieces of testimony to my own and would like them added to the record. The first was delivered before a House Agriculture Subcommittee in 1963 by Arnold Mayer, now of the United Food & Commercial Workers. And the second was prepared this year by the United Farmworkers.

I too have had personal experience with the large-scale guest worker program. In 1974 I was a temporary foreign worker in Switzerland. The Swiss, like several other European countries, had become involved with guest workers when unemployment was quite low. By 1974, however, unemployment, recession, and social tensions had increased to the point that all European countries began to have second thoughts. Germany limited its guest worker program in 1973. Additional emigrees were banned from France in 1974. In that year, in fact, the Swiss took the first of three national referendums to deport foreign workers.

Nevertheless, many stayed, and the problem remains. Guest workers, instead of a temporary solution, became a permanent social problem, and there is precious little reason to rub our own nose in that mistake.

Senator Simpson. Thank you very much.

[The prepared statement and submissions of Mr. Allstrom follows:]

STATEMENT OF PETER ALLSTROM

My name is Peter Allstrom. I am the Director of Research for the Food and Beverage Trades Department of the AFL-CIO, which is composed of thirteen unions and 3.2 million members. Many of those members are greatly disadvantaged by illegal immigration. We certainly support a national immigration policy and we applaud your efforts to build a concensus behind a policy "package." But, Mr. Chairman, we do not think that any large temporary worker program deserves a place in that package. It would be a grave mistake.

In July the Attorney General announced that the administration will "seek legislation to establish an experimental temporary worker program for Mexican nationals." The proposal would run for two years, admitting fifty thousand workers annually for stays up to twelve months. While the proposal is designed to appear modest, with its experimental tag and supposed safeguards, there should be little doubt that the Administration sees this proposal as the forerunner of a much larger guestworker program.

There are several reasons why this would be very bad road to follow: (1) Coming at a time of high unemployment, the Reagan proposal is inconsiderate and ill-conceived; (2) it is a remarkable and unwarranted imposition upon the labor market and free enterprise system; (3) it is contrary to fundamental American social traditions; (4) it has alarming implications for our international posture; (5) these guestworker programs are not consistent with the more sensible and otherwise achievable immigration policy objectives; and (6) it ignores substantial domestic and international experience with temporary workers. These unfortunate experiences, I believe, were among the reasons that you and most members of this panel, Mr. Chairman, voiced so many reservations about expanding guestworkers when it was a proposal before the Select Commission on Immigration and Refugee Policy just last winter.

1. UNEMPLOYMENT

Most arguments favoring temporary foreign worker programs talk at great length about the supposed "need" for these people. It is believed, apparently, that capable US citizens are in short supply, or the corollary, that there are jobs here that simply cannot be done by our people. Yet, unemployment among our same people has increased to seven and a half percent. In certain youth and minority groups of workers, unemployment is much higher, reaching forty percent in precisely those populations most likely to compete with the imported workers. Moreover, that competition would be doubly unfair to the US citizens. The guestworkers would surely be carefully screened by their potential employers. By that screening I'm not only talking about the more unsavory practices of looking for the docile and exploitable individuals, but referring to more legitimate searches for qualified personnel as well. Whereas those foreign workers allowed to enter the United States would undoubtably be prime labor (why else would an employer go to the trouble?), US citizens follow the normal "S" curve of ability -- as would any large, random group.

2. FREE ENTERPRISE AND LABOR MARKETS

After so many anthems to market forces this year, this guestworker proposal is a little confusing. This administration, so dedicated to free market mechanisms where laws to protect consumers, workers and the environment are concerned, evidently would handcuff the market's wonderful invisible, guiding hand when it comes to what kind of money working people should earn. This area, for some reason, is appropriate for government interference. But, my reading of supply and demand suggests that if we lack labor in any region or occupation, wages and working conditions should improve until the necessary people show up. It does not seem fair for government to demolish supply and demand by changing the rules of the game. Importing tens of thousands, potentially hundreds of thousands of foreign workers does, in fact, change the rules.

But, unfortunately, it does even worse than that. Guestworkers are a labor wage subsidy for employers. Part of the cost is paid by those workers who would otherwise find a job, at decent conditions and decent pay. But part is paid by all of us, as consumers. When employers and government conspire to depress wage levels in a particular part of the country or economy, they avoid improving productivity. In place of any incentive to improve efficiency they enjoy a subsidy, underwritten by the taxpayers, the consumers and the workers least able to pay.

3. OUR SOCIAL TRADITION

There are in this proposal official guarantees, which theoretically assure full coverage under laws protecting workers' rights. This sounds good, but, again, the dog won't hunt. In practice, the necessarily limited tenure of guestworkers prevents enforcement of certain, often the most important, labor laws. Lengthy NLRB proceedings, for instance, may simply take too much time to adjust unfair labor practices or to realize union representation. Any protracted enforcement procedure (whether legitimate due process or not) effectively nullifies protection of the temporary worker. We in the labor movement are all too familiar with employers who stall on labor law. A company can tie the Wagner Act in knots if it is determined to do so. The cost to the average citizen is bad enough: to someone on a twelve montn visa it is everything. Justice delayed is justice denied.

Exploitation on this kind of systematic basis cuts right to the heart of our democratic principles. A large group of people, denied the right to family, denied the right to equal protection under the law constitutes an economic sub-class. Because these workers would also be denied access to basic and minimal social services while paying the same taxes as any other resident, testimony in the House last week raised an even more provocative question: Is this not taxation without representation, condoned, administered and enforced by the state thousands of miles away? Whether or not there is short run economic advantage to this policy (which I greatly doubt), it is certainly not worth the sacrifice of so many, so important national traditions.

4. INTERNATIONAL IMPLICATIONS

The absence of diplomatic support for this proposal is disturbing. Other testimony in the House last week described an almost total lack of enthusiam among the leaders of the Mexican government. Clergymen and labor groups south of our border sent a strong letter of opposition to President Portillo. There is also real reason to doubt the ability of our counsular staff to handle the increased volume of visas. Presumably, despite these discouraging words, guestworkers would make a positive contribution to our relationship to Mexico; presumably, they would fit in with the "good neighbor policy." But the spectacle of exploited compatriots would seem to excite as much tension as admiration on the border. Mexican nationals will see oppression, as well as wages. Without more positive signals, the international traffic in human labor seems as dangerous enterprise, indeed.

5. A PACKAGE AT WAR WITH ITSELF

Throughout the discussions of this issue at the Select Commission, guestworker proponents tried to explain their programs as some sort of alternative, or answer to illegal immigration. They were haunted, throughout, by a spectre: During the bracero program, illegal immigration actually increased. Migrant streams, based on kinship, community or other criteria, supported a large and illegal population exchange, despite very good enforcement cooperation between the US and Mexican auithorities. Clearly, as articulated by both the commission and staff reports, guestworkers are not a solution, and could in fact worsen the situation when recruitment is carried out in Mexico.

Guestworkers pose one problem for the border enforcement section of the President's package and quite another for amnesty. The administration proposed last July a legalization program for undocumented workers who have been in the United States since January, 1980. It too has grave deficiencies. But it does propose to legalize an unknown, and certainly large group of people. Unfortunately, as is the case with all illegal immigration questions, we don't know how many. We don't know what their unemployment rates are. We don't know how many families will eventually be joining these people, or how many of them will be in the labor force. Many eminent demographers appeared before the Select Commission's advisory group to discuss immigration and economic development. They told us that we also can't know what our occupational and regional labor requirements will be any more than five years from now. Yet, in the middle of this fog, we are asked discern a long term need for additional workers? Shouldn't we be a bit more cautious with the economy?

6. GUESTWORKER EXPERIENCE

Perhaps the most astonishing thing about this new proposal is that we've seen it fail before.

The United States' experience with temporary worker programs started in 1917 when labor shortages during World War I led to a four year program with an estimated eighty thousand Mexican workers entering the country. In 1942, the United States and Mexico agreed on the "bracero program" - the largest and longest temporary foreign worker program officially accepted by our country. The program lasted for twenty two years with over four and one-half million workers coming over from Mexico. It is a prime example of all that can go wrong with a large scale temporary worker program. To explain the issues involved, which are so relevant today, I'd like to have two pieces of testimony appended to my own and entered in the record. The first was delivered before a House Agriculture Subcommittee in 1963, by Arnold Mayer, then with the Amalgamated Meat Cutters and Butcher Workmen and now a Vice President of the United Food and Commercial Workers. The second was prepared this year by the United Farm Workers.

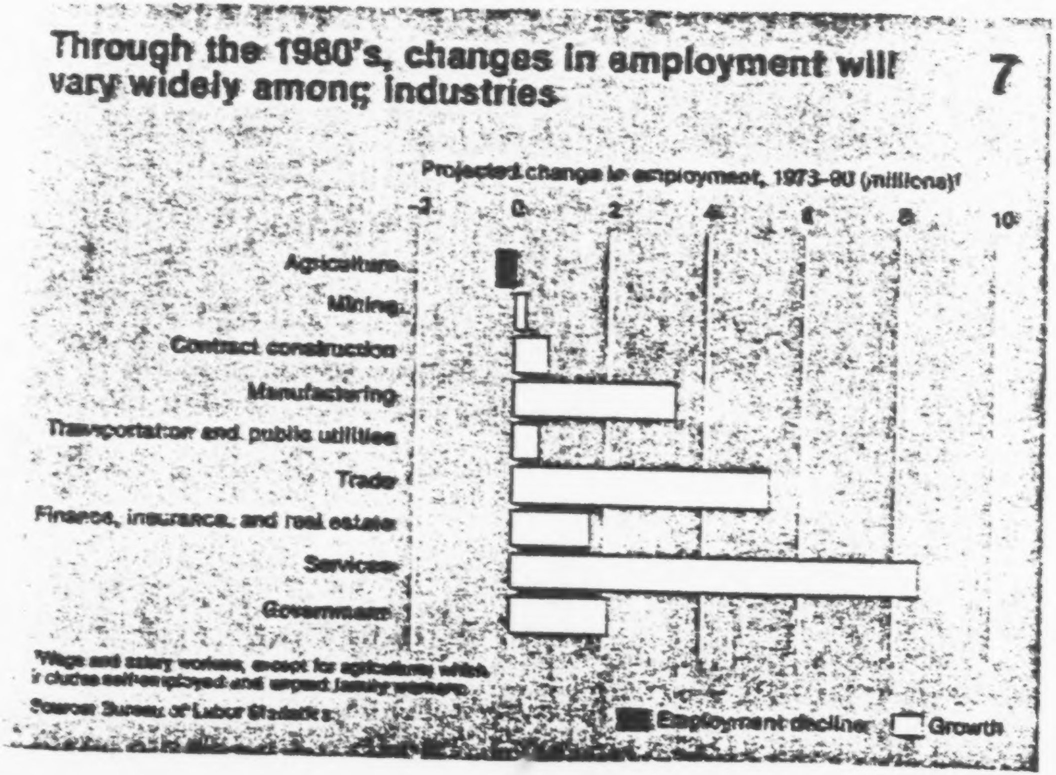
Although my own understanding of bracero, because of my age, was not first hand, I did have personal experience with a large scale guestworker program in Europe. During 1974 I was a temporary foreign worker in Bern, Switzerland. The Swiss, like several other European countries, had become involved with guestworkers when its unemployment rate was quite low. Unlike some of the others, and in sharp distinction to this country, Switzerland has recurring shortages in its semi-skilled and semi-skilled labor markets. Large numbers of workers were imported, and in 1973 it was estimated that almost twenty percent of the Swiss workforce had homes and spent their wages in Italy. Portugal, looking to Switzerland and elsewhere, began to see human labor as its most profitable exportable resource. By 1974, however, unemployment, recession and attendant social tensions had increased (though joblessness was still unbelievably low by American standards), and they began to have second thoughts. Germany stopped its Gastarbiter program in 1973. Additional complements of emigres were banned from France in 1974. In 1974, in fact, the Swiss took the first of three national referendums on expelling all foreigners. More than a third of the vote, the people I saw at lunch and who shared the bus in the morning, voted not just to stop the guestworker program, but for a deportation plan as well. It was a chilling experience. There were several thousand unemployed Egyptian college students, stranded at the Zurich railroad station with no money and no way to get home. There was also competition for the most menial and low paying jobs. Nonetheless, this kind of pressure was not enough. Many of the guestworkers remained where they were not welcome, and went underground. The experience is illustrative, because (1) work permits and employer sanctions throughout Europe are much more rigorous than those being proposed here, and (2) even the "capital grants" (cash rewards to guestworkers who leave) have not effectively persuaded workers to return home. The prospects are not more encouraging here.

For most foreign workers the lifestyle, the constant and endless processing through government bureacracies was terribly demeaning, and not particularly overstated by the recent Italian movie "Bread and Chocolate." We had separate entrances at airports and train stations, where the fabled Swiss hospitality was somehow absent. We had company boarding houses which were not very different from the extortion practiced in company towns here in the nineteenth century. We did, perhaps suprisingly, have labor contracts, but they were unilaterally imposed. The contracts certainly did not confer workers' rights, but did legitimate the "room and board" payroll deductions, and in some fashion made the government think that everything was just fine. I remember, quite vividly, being marched upstairs to the boss' office, being handed a contract, and being told to sign it. Well, I couldn't bargain, but at least I could read it. But there were three others there who also signed the same kind of document. They, however, couldn't speak any German at all, and had no idea what it was they signed. Unions were active in town, but as far as anyone knew they were only for the Swiss; and I can assure the committee that I was the kind of person, even then, who could find a union if it was available.

In other parts of Europe the situation was even worse. There were riots in France, and routine conflicts over housing, training programs, visas, and social welfare elsewhere. Guestworkers, instead of a temporary economic solution, became a permanent social problem.

There is precious little reason to rub our nose in that mistake.

SOURCE:
OCCUPATIONAL OUTLOOK HANDBOOK, 1980-1981, U.S. DEPT. OF LABOR



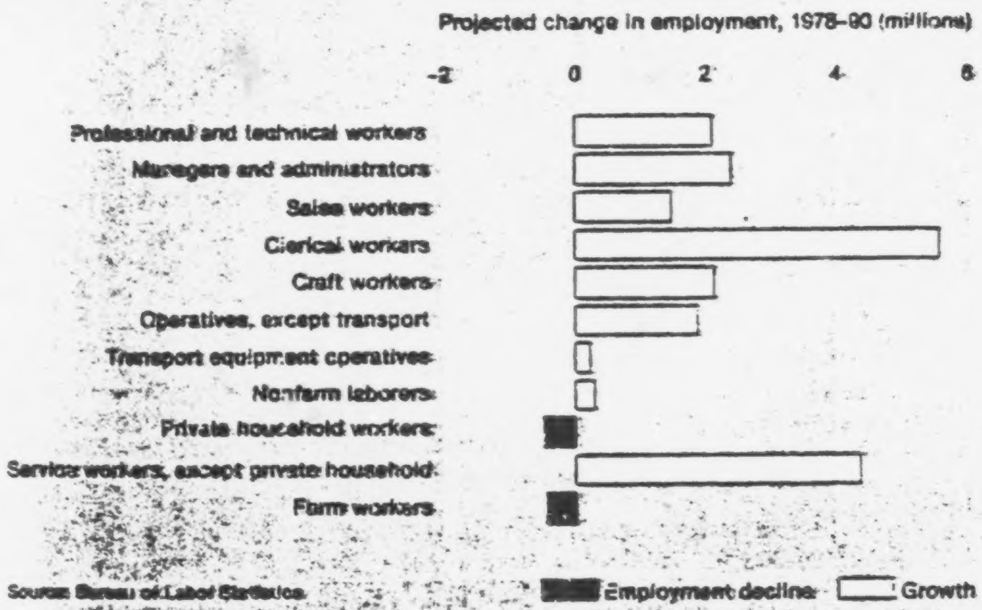
Through the 1980's, changes in employment will vary widely among industries

¹Wage and salary workers, except for agriculture which includes self-employed and unpaid family workers.

Source: Bureau of Labor Statistics.

Through the 1980's, changes in employment will vary widely among occupational groups

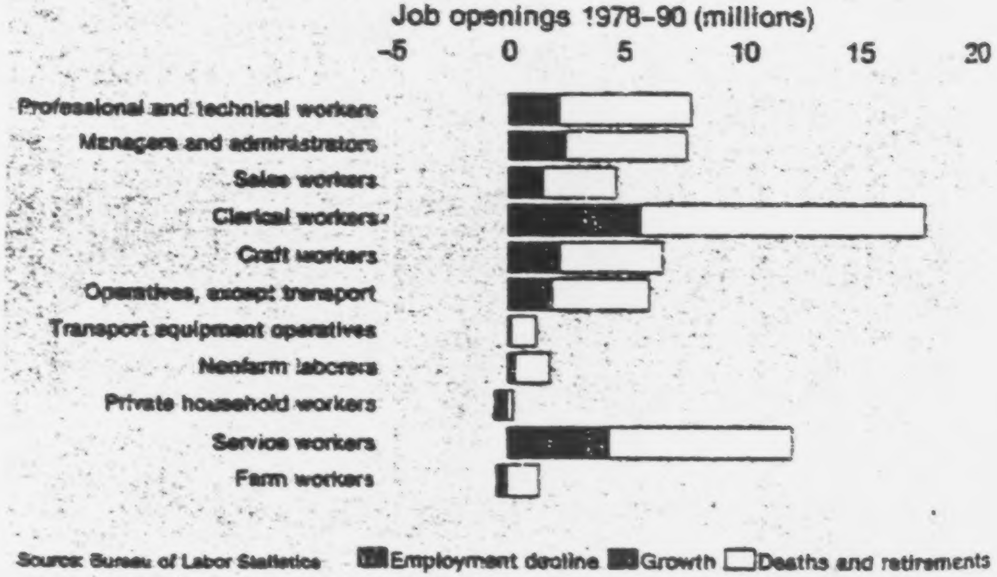
10



Source: Bureau of Labor Statistics.

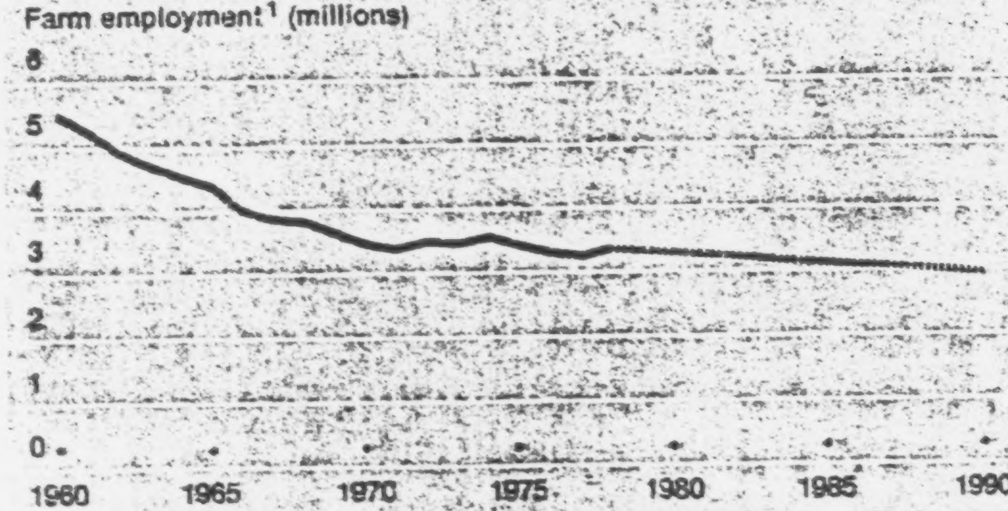
Job openings will result from employment growth, deaths, and retirements

12



Source: Bureau of Labor Statistics

Although farm output has increased significantly since 1960, employment has dropped by two-fifths and is expected to continue to decline



Source: Bureau of Labor Statistics

¹Includes self-employed and unpaid family workers

TESTIMONY DELIVERED BEFORE THE

SUBCOMMITTEE ON EQUIPMENT, SUPPLIES AND MANPOWER

COMMITTEE ON AGRICULTURE

U.S. HOUSE OF REPRESENTATIVES

MARCH 29, 1963

STATEMENT OF ARNOLD MAYER, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA

Mr. MAYER. Mr. Chairman and gentlemen of the committee, my name is Arnold Mayer. I am the legislative representative of the Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO.

The AMCBW is a labor union with 375,000 members organized in about 500 local unions throughout the United States and Canada. The AMCBW and its locals have contracts with thousands of employers in the meat, retail, poultry, egg, canning, leather, fish processing, and fur industries. With the merger of the National Agricultural Workers into the AMCBW in July 1960, our union also has the jurisdiction among agricultural workers.

For the third time in a 3-year period, I am appearing before this subcommittee to plead with you to do something about one of the most tragic blots in our national economic life. I am here again to ask you to take action against an injustice which has, during the last 10 years, cumulatively lowered the wages and decreased job opportunities for over 2 million Americans.

The appeal of my union to you this year is somewhat different from the ones of the past. Previously, we have urged you to reform Public Law 78, the Mexican farm labor importation program.

We believe that through wage policies, through proper enforcement, this law could be changed, so that it would not be a millstone around the necks of American farmworkers. Unfortunately, this moderate position brought no response from the growers. They were apparently unwilling to consider reforms.

Our position today is to ask you to permit Public Law 78 to expire on December 31, 1963. We ask you to terminate this program.

Let me quickly add that we have not changed our position because of the obdurate stand against reforms by the bracero-using growers. We wish them well even though we do not believe they have acted responsibly in this legislative area. We say to them, and to you, with all frankness that we sincerely hope that they will prosper both collectively and individually. Our aim—one for whose attainment we shall spare no effort—is to improve the economic and social condition of the farmworker. Our aim is not—I repeat—our aim is not to deteriorate the condition of the growers.

If the growers believe that the improvement of the farmworkers' condition must necessarily deteriorate their own—a view which many of their actions on farm-labor legislation would indicate—we can only say that we must disagree with such a stand. We cannot share this view of economics.

1. LET FREE ENTERPRISE WORK

In urging an end to Public Law 78, we are appealing to you to allow the free enterprise system to work. Two bases of this system are competition and the law of supply and demand. The Mexican farm labor importation program negates both and therefore runs counter to the free enterprise system.

Because of Public Law 78, some growers do not have to compete for labor. They need not rely upon supply and demand to set the price for the labor they hire. Instead, they offer a certain wage to domestic workers. This wage need not, and often is not, based upon the supply of and demand for labor. It is a low and arbitrarily set wage. When the wage is not high enough to attract domestic workers, the grower need not raise the wage. He can simply ask the U.S. Government to supply him with prime labor from Mexico.

Because there is such fantastic poverty in Mexico, farmworkers are readily available there. Their influx, their willingness to work for wages and under conditions which are alien even to poverty-stricken U.S. farmworkers, brings competition for the first time to the labor market in bracero-using areas. But this is a competition of poverty against poverty and brings about still greater poverty. It is a competition which lowers wages.

It would be nonsensical for the automobile industry—a seasonal industry, by the way—to offer jobs at $1.50 an hour and finding few takers, ask the Federal Government to import auto workers from Western Europe at that wage rate. Let them pay whatever wages are necessary to attract American workers, we would say. Yet this nonsensical, hypothetical situation is the bitter reality in some parts of agriculture—with the great difference that $1.50 an hour is a rarely reached figure on farms.

Or to put the matter directly in agricultural terms, California State Senator Albert S. Rodda, a member of the State senate factfinding committee on labor and welfare declared:

> Supply and demand cease to operate in the normal sense and the market fails to act as a determinant of the price for labor. An equivalent situation from the farmer's point of view would be to have a "supplemental" supply of Mexican strawberries hanging over each day's strawberry market. Perhaps, in the long run, there might not be any but supplemental Mexican strawberries in the market.

2. WAGES DROP BECAUSE OF PUBLIC LAW 78

What are the results of the Public Law 78 importation? They have been and can only be that wage rates have suffered and job opportunities for domestic workers have diminished. Not only have wages failed to reach the true level which they would have if supply and demand and a competition for labor had operated, but wages actually dropped. It is only in the recent 2 years that the downward trend caused by the bracero importation has been stemmed. But, as we shall show, that change has not and cannot rectify the cumulative adverse effect on wages which has occurred.

Here are some examples of wages actually being driven down by the bracero importation.

In California's Stanislaus County, the rate for picking tomatoes in 1950, before Public Law 78 was enacted, was from 15 to 25 cents for a 50-pound box with a 20-cent midpoint; in 1961 the rate was 14 to 20 cents with a 17-cent midpoint.

In the Imperial Valley, California, sugarbeet harvesting paid $1 to $1.25 an hour in 1950; in 1961, with a mechanized harvest, the rate had dropped to $1.

In Solano County, Calif., cutters in the wine grape harvest were paid 18 to 20 cents a box in 1952; in 1961, the "prevailing wage" was 15 cents.

In Arkansas, cottonpicking brought $3.25 per 100 pounds in 1948, according to the U.S. Department of Agriculture. By 1960, the rate was $2.85 a hundred pounds.

What does this mean to the individual worker? Here is an excerpt from the testimony of James Davis, a farmworker who lived at 1822 11th Street, Sacramento, Calif., when he testified at the U.S. Department of Labor hearings in Sacramento on February 21, 1962:

> I was born and raised in Tracy, which is in the San Joaquin Valley. I went to grammar school and high school in Tracy. I knew all the growers and contractors around there and they knew me. We grew up together. It used to be, you could make a fair living out of farmwork. It used to be, that you could go out to the field and talk man to man to the owner.
>
> If it was tomatoes for example. They grew a lot of tomatoes around Tracy. We might hear there was a job at 15 cents a box. When we got out to the field we might find the crop a little below par. We would tell the grower or the contractor that we had to have another 2 or 3 cents a box. And we would usually get it.
>
> But once the bracero program got into swing, that never happened any more. If we did not like the rate, we could go someplace else. And when all the bracero users got together and started paying exactly the same, we just had to get out of the area entirely.

Mr. Davis said further on in his testimony:

> In the tomatoes, before 1951, the wage never used to start lower than 15 cents a box, and it would always go up later in the season, or when the field was below average. After the braceros came in, it went down and down, until 11 cents a box was standard, right across the board.
>
> The effect on domestic wages has been terrible. A domestic just can't support himself on the same wages a Mexican national can. The Mexican is only here for a few months, then he goes to Mexico where everything is cheaper. We have to live here the year around and pay American prices for things we buy.

3. LAW'S PROVISIONS DO NOT PREVENT ADVERSE EFFECT

All this—and the hundreds of thousands of less dramatic cases where wages stood still or failed to increase as much as they would have if the laws of supply and demand had been allowed to operate—has happened despite the strict admonition against adverse effect contained in (1) Public Law 78, (2) in several parts of the Migrant Labor Agreement between Mexico and the United States, and (3) in the joint interpretation of 1961 signed by the U.S. Secretary of Labor and the Mexican Secretary of Foreign Relations. To save time, let me just quote a pertinent part of section 503 of Public Law 78:

> No workers recruited under this title shall be made available for employment in any area unless the Secretary of Labor has determined and certified that, (2) the employment of such workers will not adversely affect the wages and working conditions of domestic agricultural workers similarly employed * * *.

In the past, the Amalgamated Meat Cutters & Butcher Workmen (AFL-CIO) had thought that a strict enforcement of this principle would be possible and would take care of the situation. That is why we argued for reform of Public Law 78. That is why we urged a variety of amendments.

Today, we are sadder, but wiser.

The Labor Department has improved its enforcement procedures, as can be told from the very loud complaints heard from the growers, who apparently regard it as unfortunate that the Department is attempting to meet some of the spirit and letter of the law. The Labor Department has also put into effect some adverse effect regulations.

We are delighted that the Department has taken these steps. We commend the Secretary, Mr. Willard Wirtz; his predecessor, Mr. Arthur Goldberg, and their present and past subordinates, for their desire to improve the plight of domestic farmworkers. But these improvements have certainly fallen very short of truly preventing adverse effect to U.S. farm laborers.

In the first place, the adverse effect rates established are often less than the average hourly farm labor rate of each State. In California, for example, the adverse effect rate of $1 an hour is certainly below the $1.12, $1.20, $1.25, and $1.35 wages being paid in various crops. In Arkansas, the average farm labor rate was 76 cents an hour in 1961 and has probably risen higher in 1962. Yet the adverse effect rate is 60 cents. In Colorado, the average farm labor rate was $1.13 an hour, but the adverse effect rate is only 90 cents.

In the second place, even if the State average wage were designated the adverse effect rate, justice still would not be done to the farmworkers. For the State average farm labor rate is the product of the adverse effect of 10 years of Mexican farm labor importation. These adverse effects have accumulated.

In signing the last extension of Public Law 78, in October 1961, President Kennedy recognized the cumulative nature of the adverse effect. He said:

> The adverse effect of the Mexican farm labor program as it has operated in recent years on the wage and employment condition of domestic workers is clear

> and cumulative in its impact. We cannot afford to disregard it. We cannot condone it. Therefore I sign this bill with the assurance that the Secretary of Labor will, by every means at his disposal, use the authority vested in him under the law to prescribe the standards and to make the determinations essential for the protection of the wages and working conditions of domestic agricultural workers.

We regret that the high hopes of the President have not been realized. Because of the experience of the last 18 months, we have come to the conclusion that it is impossible to get rid of cumulative adverse effect as long as Public Law 78 continues. The importation of hundreds of thousands of foreign workers, by its very nature, must cause adverse effect because it must prevent the laws of supply and demand from operating. There is no way out. If this Congress truly intends to prevent adverse effect upon domestic farmworkers, it must end the importation of Mexican farm laborers.

4. LABOR IS AVAILABLE

The more realistic of the growers will not argue the inevitability of adverse effect under Public Law 78. But they do claim that they cannot obtain sufficient labor without the importation. We disagree. We must say again what we have said in the past: Pay higher wages; pay according to supply and demand, as other American industries must, and sufficient labor will be available.

The fact is that the American farmworker suffers tremendous unemployment and underemployment. He had an average of 134 days of work in 1961. That is only a little more than one-third of a year. The former Secretary of Labor, Mr. Goldberg, estimated in his testimony before a Senate Agriculture Subcommittee in 1961 that 1,400,000 farmworkers would be totally unemployed if rural unemployment and underemployment were calculated together.

Since the time of Mr. Goldberg's testimony, mechanization has advanced even further in agriculture. Vast regions, such as the cotton areas of the Rio Grande Valley and New Mexico have cut their manpower requirements by 60 and 70 percent. Unemployment is increasing in agriculture. Men who worked on farms before have been thrown out of work and are available for labor on other farms.

There are other factors which indicate the availability of labor if wages improve:

1. Even the minimal increases which the Department of Labor's adverse effect regulations have brought above have created an increased domestic labor force in many areas of California, Texas, Arkansas, and New Mexico. Domestic employment in cotton chopping in Arkansas, for example, increased from 88,000 to 97,000 man-months in 1962, while bracero employment in this work dropped from 18,000 to 8,000 man-months. In New Mexico, average domestic employment increased 6 percent in 1962, while bracero employment dropped 62 percent.

2. As for the argument that Americans will not perform some types of farmwork, the fact is that there is no crop which is cultivated or harvested in one area by braceros which is not cultivated or harvested entirely by domestic workers in another area of the same State or in another State. This is true whether the crop is tomatoes, sugarbeets, vegetables, cotton, citrus fruits or anything. For example, tomatoes are one of the most heavily bracero-dominated crops in the West and

the only crop in which the proportion of braceros in the work force increased in 1962. (Braceros made up 86 percent of the California tomato harvest force.) Yet in New York, Pennsylvania, and New Jersey, tomatoes were harvested by domestic labor.

3. In past years, 60,000 farmworkers were forced to migrate from their homes in Texas to harvest crops in other States, when more than 100,000 braceros were imported into Texas to harvest the Lone Star State's crops.

4. The State of Washington has worked out programs through which only American farmworkers are recruited to work the fields. The Department of Labor has an annual workers plan under which crews of American farmworkers are scheduled for work in a succession of jobs in a number of areas. Growers using this system have had adequate labor.

5. During World War II, when most of our young men were in the Armed Forces, when peak production was required, when farm labor productivity was much, much lower than it is today, only a fraction of the Mexicans imported today, were required. Only 75,000 were needed under the extreme wartime emergency conditions, which do not exist today.

5. NEED TO BRING ORDER TO CHAOTIC FARM LABOR MARKET

I should like to anticipate a question which members of the committee may ask. You will probably wonder how I would explain the various testimony of growers that they offered *x* cents an hour more than prevailed in a particular area and they still could not attract a sufficient number of domestic workers.

I am not personally familiar with these situations. But I will assume that they were sincere efforts even though the record is full of attempts by growers to discourage domestic workers. I will also assume that the wage should have been sufficient to attract workers although adding a few cents onto the prevailing wage rate still leaves an inadequate wage at times.

Yet these isolated examples hardly counter the argument that adequate wages will attract domestic workers. They do, however, point out a serious problem which must be faced. That is: the agricultural labor market is poorly structured to get growers and workers together. Workers do not have enough information to go into the right area at the right time. Growers and workers face hit-or-miss situations in job offering and job getting. This is true for workers moving both intrastate or interstate.

Solutions to this problem are available. But the growers have been loath to take them. There is the annual workers plan in which the Department of Labor schedules work for over 200,000 agricultural workers. The plan assists growers in getting labor, and workers in getting jobs. It limits the time-wasting search.

There is also the legislation, which Senator Harrison Williams has suggested, the job stabilization bill of the last Congress. This measure proposes a system similar to the Mexican farm labor importation program. But instead of importing Mexican nationals, it would provide jobs for American citizens.

The growers have, in the main, shown a great indifference to the annual workers plan and a tremendous opposition to the job stabilization bill. They have done this even though these programs would provide them with a means of gaining domestic labor in adequate supply. They say they would rather employe domestic workers, but they sharply oppose programs which would assure the availability of U.S. laborers. The utter nonsense of this situation is apparent from the violent attacks heaped upon the job stabilization bill in 1961 and 1962. It was "Government control." It was "putting the Government into agriculture." It was "making the Secretary of Labor a czar over agriculture." These are strange arguments from the particular sources they came from. In the first place, many of these charges were made by representatives of growers who are actually subsidized by the Federal Government. In the second place, the job stabilization bill provided less authority to the Federal Government or the Secretary of Labor than does the Mexican farm labor importation program. The job stabilization bill's usefulness comes not in the form of any control over jobs, but rather in that only domestic workers would be recruited and offered work under it.

New job opportunities would be provided to U.S. workers who desperately need them.

As long as the growers are generally indifferent to the use of the annual workers plan and oppose the programs which would recruit domestic workers, their argument that domestic labor will not be available without Public Law 78 must be regarded with suspicion. There must be other reasons, rather than the alleged unavailabiilty of workers, for the bracero-using growers' desire to cling to the importation of Mexican nationals.

Mr. TEAGUE of California. May I interrupt? I would like to suggest that the witness boil down his statement. I think that he is presuming on the time of the remaining witnesses who will follow him.

You have a long statement; it is longer than that of Mr. Biemiller, or that of the Farm Bureau or anybody else. Can you not boil it down?

Mr. MAYER. I will try to, Mr. Chairman. I have a few more points to make.

6. REASONS GROWERS WANT BRACEROS

These reasons have at times been stated by growers even at hearings such as this one. These reasons are so important to them that they are willing to pay braceros more money and provide them more perquisites than to domestic workers. These reasons include:

1. The oversupply of labor which is created by the importation does keep wages down.

2. Braceros are docile and easily threatened. Hanging over their heads is the fear of being deported. The bracero cannot move to another association or grower. Even the already docile and long-suffering domestic farmworker does not equal the bracero in these characteristics.

3. Braceros are screened in Mexico, so that most of those who are imported are prime labor. Domestic workers follow the usual "S" curve distribution that any large group shows in any activity. Some are very good workers, the overwhelming majority are average workers, and some are poor workers. Any large random group will demonstrate a distribution of this kind.

4. Braceros must come as single men. Cheap barrack type housing can be constructed for them. Domestic workers move in most cases

with their families. They need family type housing and facilities, which might cost more to build.

In the old days when farms were smaller and owner operated, there was a certain kinship between the grower and the worker. The grower was concerned about his workers and their welfare. This still occurs in some cases. However, where labor contracting associations and corporate farming hold sway—and this is true in the overwhelming majority of cases involving hired labor today—this "sentimentality" is gone. Hard cash rules and hard policies result.

The fantastic and terrible fact is that the Congress of the United States and the executive branch of the Government of the United States aid and abet this policy. The Congress and the rest of the Government do have a responsibility, formally spelled out in the Employment Act of 1946 and other legislation, to see that Americans who want to work can get work. They have a responsibility that human beings are not treated like a commodity. They have a responsibility of getting work for their own citizens before importing foreign workers. The Congress and the rest of the Government is not only failing in this responsibility, but they are actually flouting it by allowing Public Law 78 to exist.

7. BILLS BEFORE COMMITTEE DISCUSSED

I should now like to discuss the bills and the proposals which are before this subcommittee. H.R. 1836 provides a 2-year extension of Public Law 78. It would continue the present harm which the importation causes to domestic farmworkers, to businessmen, to farmers, and to communities. For the detailed reasons set forth in our testimony, we oppose this bill.

Nor can we support the Labor Department's proposal of 1-year extension coupled with an amendment to Public Law 78. We are disappointed that Department has not seen fit to urge an end to Public Law 78 on December 31, 1963.

Finally, we are opposed to H.R. 2009. However, I would like to spend a little more time in discussing this legislation since it provides a marvelous demonstration of the contradictions involved in Public Law 78. H.R. 2009 tends to support many of the charges made concerning the intent of the Mexican farm labor importation program. Please consider these situations:

1. The supporters of Public Law 78 have maintained for years that this law is needed because workers are required for seasonal and temporary labor. On May 10, 1961, for example, the distinguished ranking Republican member of the House Agricultural Committee, Mr. Hoeven, declared during the debate on H.R. 2010:

> My interest and support for this legislation is based on the real need for seasonable farm labor in many areas of the Nation. It has been conclusively shown throughout the hearings that American labor simply refuses to do this type of stoop labor. No one can realize unless he is in close touch with the situation how fruits and vegetables in certain areas of this country need to be harvested within a period of a few days. It is highly essential that crops be harvested in time and many farmers stand to lose their entire crop because they cannot find domestic labor available at the time it is needed.

Yet paragraph (1) of section 2 of H.R. 2009 would permit braceros to work in "any agricultural occupation of a seasonal character such as cultivation or harvest of crops which are performed by *workers who are not employed on a full-time basis.*" [Emphasis added.]

"Full time" is not defined. Therefore, under H.R. 2009 it would probably be permissible for a grower to use braceros for 11 months or more—as long as he did not use them the full 12 months. This is hardly the sort of seasonal labor which the proponents of Public Law 78 describe.

2. The supporters of Public Law 78 continuously point out that this legislation is needed for unskilled, stoop labor. Mr. Hoeven's quotation above says so. Also, on September 16, 1961, the very able gentleman who chairs this subcommittee, Mr. Gathings, declared on the floor:

> Mr. Speaker, as the gentleman from Texas so well stated to the House, this legislation provides that you cannot use this labor except for temporary agricultural employment in this country. It is stoop labor, that is what it is.

Yet paragraph 2 of section 2 of H.R. 2009 would bar braceros only from jobs "in which the worker is the responsible operator and devotes a major portion of his time thereto * * *."

"Responsible operator" and "major portion of this time" are undefined. The provision makes the prohibition against a bracero doing the particular type of skilled work a matter of percentages. The language could permit a bracero to maintain and operate a cottonpicker for 4 weeks under his 10-week contract. Equally important, a Labor Department official could not be at every site where machinery is used to time bracero operation of the equipment. All this is a far cry from stoop labor.

3. Proponents of Public Law 78 have continuously emphasized their belief that this legislation will not harm domestic farmworkers. For example, the distinguished chairman of the full committee, Mr. Cooley, assured the House on May 10, 1961:

> * * * the employment of Mexican workers will not adversely affect the wages and working conditions of domestic agricultural workers similarly employed."

Yet paragraph (3) of section 2 of H.R. 2009 would define "adverse effect" so that "the employment of Mexican nationals shall not be certified in such numbers as to result in the *displacement* of domestic workers." [Emphasis added.] "Displacement" is not defined. "Displacement" could mean thrown out of work. If so, the paragraph would provide that braceros could be barred only if they caused a domestic worker to lose his job. If the hiring of braceros prevented a domestic worker from getting a job, that might not bar Mexican nationals under H.R. 2009.

Paragraph 3 further defines "adverse effect" so that the bracero need only be paid the "1957–59 average wage for similar work in the area for the specified kind of work involved, adjusted by the national trend of all farm wage rates." The base years named are the times when the greatest numbers of braceros were imported into the United States—the time when they caused the greatest adverse effect to domestic wages. Further, the base wage is so limited by area and type of work that the adverse effect provision would probably be impossible to administer. The result could easily be that the adverse effect wage under this provision would probably be lower than the present prevailing wage of the area.

Finally, paragraph 3 cautions that the "adverse effect" term "shall not be construed to authorize any regulation of wages of working conditions of domestic workers." This probably means that the Department of Labor can set an adverse effect wage for braceros, but not for competing domestic workers. Such a situation would make the entire adverse effect procedure meaningless. For a grower could offer domestic workers 30, 20, or 5 cents an hour and when no domestic workers applied for the job, he can ask for the certification of braceros because insufficient domestic workers are available.

H.R. 2009 would strip away the meager Public Law 78 reforms put into effect in 1961 and 1962. In fact, it would probably put domestic workers into an even worse position than they were in before the reforms were put into effect.

8. THOUSANDS OF AMERICAN COMMUNITIES HARMED BY PUBLIC LAW 78

In the previous sections, I have concentrated upon the hardships and harm which the Mexican farm labor importation program causes to domestic farmworkers. They are not the only ones to feel Public Law 78's whiplash. Other Americans in hundreds of communities in bracero-using areas and additional hundreds of communities in areas where domestic farmworkers live have been harmed by the program.

The unemployment caused domestic workers by the program has hurt most residents of these communities. Merchants in the Imperial Valley and in various parts of Arizona have complained to the Labor Department that their sales dropped terribly when braceros began to dominate their areas. Domestic workers had previously patronized their establishments. Many of the workers had lived in the area yearround. But these workers were driven out by the bracero importation. The bracero sends his money home to Mexico and does not come into town as often. The economic life of the community is stultified. It cannot benefit from the money earned in the area.

Welfare payments, when available to farmworkers, are increased by Public Law 78. Communities are dislocated because tens of thousands, if not hundreds of thousands, of farmworkers who used to be able to find work in their home area or intrastate must now range out of State to such distances as from Texas to Michigan and Minnesota in order to find work.

The fact is that many of the rural slums of the United States are the direct or indirect results of Public Law 78. The program's effect of causing unemployment and low wages, of exporting wages earned in the United States has blighted these communities. While corporate agriculture prospers, the communities around them fail to benefit proportionally.

9. GROWERS HURT BY PUBLIC LAW 78

In fact, the Mexican farm labor importation program actually increases the basic problems of American agriculture. As the 1960 House Agriculture Committee minority report on Public Law 78 pointed out, it is another unfair advantage of the corporation farm over the family farm. Literally thousands of tomato and other vegetable growers throughout the Nation have been driven out of business because of their inability to compete against the mass use of cheap bracero labor.

The family farmer is in the position of having his own family labor in direct competition with the cheap bracero labor. Equally important, the ready availability of cheap labor leads corporation farms to increase their production, thereby lowering the price for the commodity received by the farmer.

Even the growers who use braceros are hurt by Public Law 78. Although they benefit economically from the program, I get the impression from listening to them at these and other hearings, that they are really the captives of the program. When a new idea is suggested in an effort to deal with labor availability, they demonstrate a fantastic suspicion. There are continuous complaints from them about being misunderstood. There appear to be guilt feelings.

In the Senate hearings on Public Law 78 in 1961, a grower from California devoted a great deal of his testimony to the alleged lack of understanding shown by many Americans to the bracero-using grower.

The solution which this gentleman suggested was a massive public relations campaign.

There was something to what the gentleman said although I am afraid his solution would miss its mark. The plight of farmworkers is well known. It is hurting the image of the farmer—unfortunately, even of those who have nothing whatsoever to do with farm labor. Public Law 78, its use of human beings as commodities, its depression of wages, its lowering of job opportunities for the poorest of poor, is the biggest of the image harmers.

Look at the witness list of the opponents to the program. These groups may have limited influence in this committee, but they are important in American life. Here are religious groups, veteran organizations, consumer groups, civic organizations, labor unions, and others. Here are representatives of groups which are opinion makers. They are meaningful and they are concerned about farm labor.

I am firmly convinced that some of the difficulties witnessed with basic farm legislation is due to the harm done to the growers' image by the plight of farmworkers. I call this to your attention because, as the records of the Agricultural Committee will show, our union has strongly supported basic farm legislation, such as the various bills introduced by the gentleman from Texas, Mr. Poage.

This situation concerning farm legislation will get more serious. As corporate agriculture grows, as mechanization and cheap labor programs, such as Public Law 78, take their toll of smaller growers, the urbanization of the Nation will sharply increase. Solutions to agricultural price problems will need more and more of the support of city people.

In short, as the grower from California said to the Senate committee, it is time to build up the image of the grower. But a public relations campaign will not do it. Actions will. The growers must understand the horror and sympathy which the Nation feels at the plight of the farmworkers. They must participate with the groups which are concerned about that plight—the so-called bleeding hearts and do-gooders at whom the grower looks with so much disdain mixed with guilt.

In neither the short nor the long run, can agriculture remain a separate, low wage and bad condition island in the middle of the economy. One can not have industrialization and the corporatization in agriculture and still have this industry treated as "unique" because it is allegedly composed of farm families who till their own small acreages.

Even crops which are price supported or federally subsidized participate in the Mexican farm labor importation program. Here is the amount of price supported loans in major bracero-using States for the 1961 cotton crop which the Federal Government took over:

	Millions		*Millions*
Arizona	$18.6	New Mexico	$14.3
Arkansas	51.6	Tennessee	23.7
California	9.1	Texas	158.2

Here are the payments under the Sugar Act made to producers in States using Mexican nationals in sugarbeet work:

	Millions		*Millions*
California	$10.3	Montana	$2.3
Colorado	6.1	Nebraska	2.9
Michigan	2.6	Wyoming	1.8

This anomaly cannot continue. The taxpayer will not long meet the producers' problems with Government tax money, while other American citizens are prevented from getting work and their wages depressed by programs pushed by these producers. This is as wrong as anything can be.

I would suggest to the growers that to start changing their public image, they join with the various groups opposing Public Law 78 and get rid of this program. At the same time, I would suggest that the grower representatives join with the various groups concerned with farm labor to seek a program, perhaps along the line of the Williams' job stabilization bill, to recruit domestic workers and bring them to the areas which may need farmworkers.

As long as the growers reject any effort to bring about a program of recruitment of domestic workers, their arguments about the unavailability of domestic labor must be looked at with a jaundiced eye. If they are seriously concerned with whether labor is really available, rather than simply trying to maintain an immoral system which causes suffering and hardship in this country, they can demonstrate it in a practical way by joining in the development of a domestic recruitment law to take the place of Public Law 78.

Mr. Chairman and gentlemen of the committee, I appreciate the time you have made available to me to present the views of the Amalagamated Meat Cutters and Butcher Workmen (AFL-CIO). Thank you very much.

Mr. GATHINGS. Thank you very much.

Mr. MAYER. Thank you.

Mr. GATHINGS. The next witness is Mr. Jacob Clayman, administrative director, Industrial Union Department, AFL-CIO. We will be glad to hear you now.

UNITED FARM WORKERS of AMERICA AFL-CIO

TESTIMONY
OF
UNITED FARM WORKERS OF AMERICA, AFL-CIO
TO THE
SENATE SUBCOMMITTEE
ON IMMIGRATION AND REFUGEE POLICY
ON
GUEST WORKER PROGRAM

PRESENTED BY

STEPHANIE BOWER
LEGISLATIVE REPRESENTATIVE

OCTOBER 22, 1981

Mr. Chairman, on behalf of the United Farm Workers of America, AFL-CIO, I would like to thank you for the opportunity to express our viewpoint on the proposed Guest Worker Program.

The proposed pilot program, as we perceive it, would permit 50,000 guest workers per year to enter the country for each of the next two years.

WHAT UNIONIZATION HAS MEANT TO THE AMERICAN FARMWORKER

Farmworkers are among the lowest paid workers in America. Their children work in the fields out of necessity and drop out of school at the age of ten years. Farmworkers are three times as likely to die from job related accidents as the average American worker. The death rate among migrant infants is 125% higher than the national average. Seasonal and migrant farmworkers are paid too little, travel too much and die too young.

In the industries where the United Farm Workers have contracts, farmworkers earn a living wage, their children are in school, they have medical insurance under the Union's Robert F. Kennedy Health Plan. Union contracts also provide farmworkers with pension security, pesticide protection and now in some industries, our latest contracts provide for a Cost of Living Allowance (COLA). These farmworkers are finally participating in American life to it's fullest, have pride in helping to feed Americans every day, and are able to take part in our political process. These victories have not been won easily.

U.S. agribusiness, which is increasingly dominated by large corporations and conglomerates, is ever resisting the UFW's right to unionize and to have effective collective bargaining laws; is fighting against unemployment coverage, workman's compensation and other social legislation for farmworkers so that they will stay poor, hungry and available for low paying jobs. Several years ago they even proposed bringing back child labor under the then proposed Hathaway Amendment. These successful agricultural employers have traditionally encouraged the influx of migrants, undocumented workers and contract foreign labor guaranteeing a surplus of labor and a lowered wage structure.

BRACERO PROGRAM (Public Law 78)

From the second world war until 1964, the growers in the Southwest benefited from the U.S. Governments' bracero program. Under this law, employer organizations contracted for Mexican national labor to pick the crops for specific periods of time. During the peak year of 1959, 447,535 Mexican Nationals entered the U.S. to work under this program in agriculture.

The braceros worked under contracts negotiated between the U.S. Department of Labor and agricultural employer groups. The contracts were rarely enforced except for the section which denied the bracero the right to join U.S. labor unions.

The abuses of the bracero program included the following:

(1) Displacement of domestic workers because of a strong grower proference for braceros, e.g. single men's housing gradually replaced family housing. This displacement increased with each passing year despite government guarantees that domestic workers would have first preference for jobs.

(2) Stagnation or reduction of wages: grower associations decided in advance what wage to offer; if domestic workers refused to work for those wages, then employers would announce a "labor shortage" and the government provided braceros.

(3) Use of braceros to break strikes and to demoralize organization by domestic workers.

(4) Virtual enslavement of braceros who were promised many things but received very little: braceros lived in company camps, were dependent on the company for food and transportation, bought from company stores and/or labor contractors and were regularly returned to Mexico if they protested or tried to organize (undocumented workers are also exploited.)

H2 PROGRAM

Just as agribusiness employers preferred braceros for economic reasons and because they were a docile workforce, they also prefer H2 workers. H2 refers to the H2 Section of the U.S. Immigration and Naturalization Act. (Public Law 414). This law gives the government the right to import foreign workers when the need exists. Under H2, Jamaicans have been brought in to pick sugar cane in Florida and apples in the East; Mexicans have been recruited in the Southwest.

> In 1976, mill and refinery workers struck the Glades County (Fl.) Sugar Growers Cooperative when the company attempted to abolish seniority. All the 500-600 West Indian contract workers (H2 workers) supported the strike-and they were promptly deported. (Deprted workers are then "u-listed", which means that they will not be selected to work in the U.S. in future seasons.)
>
> "If I had a remedy comparable to breaching (deporting) an unsatisfactory worker - which is allowed under the West Indian (H2) contract - that I could apply to the American worker, then he might work better too."

(Fred Sikes of the U.S. Sugar Corporation)
NACLA Report, Nov.-Dec., 1977

AVAILABILITY OF LOCAL DOMESTIC WORKERS

If a labor shortage can be established in the public mind, then growers can justify a request for foreign contract or guest workers. The United Farm Workers believes that just as there is no shortage but rather an oversupply of workers at our Union hiring halls on a daily basis, there is no shortage of farm labor anywhere in this country if workers are offered a living wage. Unemployment in the United States is currently over 7 per cent (translates into seven million unemployed; unemployment among Hispanics is 9.7%, among blacks, 15% and over 50% among black youths. We feel that a strong, aggressive positive program should be undertaken to analyze farmworker labor needs, and to place local workers in jobs in their respective communities.

EUROPEAN GUEST WORKER PROGRAM

Fifty per cent of all guest workers admitted under European programs remained more than five years despite efforts to get them to depart. Tensions were caused when receiving countries unilaterally decided to encourage returns.

CREATION OF A MEXICAN SUB-CLASS IN AMERICA

The proposed guest worker program would create a permanent sub-class of persons who are present legally but denied full rights in the United States. They would be denied voting rights and social benefits. While these conditions already exist among illegal immigrants, a large scale guest worker program would legitimize and expand a permanent isolated and powerless sub-culture.

UFW OPPOSES PROPOSED GUEST WORKER PROGRAM

The United Farm Workers of America, AFL-CIO believes the intent of the proposed guest worker program is to supply a cheap labor force to agricultural employers - particularly those located in the south and southwest areas of the United States.

We also believe that the intent of this guest worker program is to destroy the unionization efforts of farmworkers.

The United Farm Workers takes the position that this influx of workers will create a larger labor pool and take jobs from local domestic resident workers which will further increase an already critical unemployment situation.

Futhermore, this proposed guest worker program is being falsely presented as an act of generosity towards Mexico and the Mexican people. In reality it is an insult to Mexicans and to the American philosophy of decent working standards.

On May 24, 1979, Luis Gonzales, an illegal alien, told the Senate Labor and Human Resources Committee, in Washington, D.C. about leaving his pregnant wife in Central México to find a job in the California lettuce fields. When the 24 year old Gonzales arrived in the Salinas Valley, he learned he had been hired to replace striking United Farm Workers' union members.

Gonzales' story is one of thousands just like him. If the proposed guest worker program were to become a reality - our efforts to unionize America's fields, which represent edcent wages and living conditions to American farmworkers would be in constant jeopardy.

STATEMENT OF UNITED FARM WORKERS OF AMERICA, AFL-CIO TO THE HOUSE SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW ON THE SUBJECT OF AMNESTY

OCTOBER 14, 1981

The United Farm Workers of America, AFL-CIO looks upon the proposed amnesty program as a fraud.

The proposed amnesty provision requires that a Mexican immigrant must reside in the U.S. for 10 years. During this time, the immigrant may not be joined by his family. We believe that it would tear at the very heart of family life.

The proposed amnesty provision is a government sanctioned semi-slave program. The immigrants will be free to work and to pay taxes. However, they will be denied social benefits which include unemployment insurance, welfare, food stamps and federally subsidized housing.

STATEMENT OF
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
TO THE SENATE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY OF THE
SENATE COMMITTEE ON THE JUDICIARY

October 22, 1981

The AFL-CIO appreciates the opportunity to present our views on the Reagan Administration's proposal to import temporary labor from Mexico, euphemistically labelled a "guest worker" program.

As we understand the proposal currently being considered it would provide for up to 50,000 guest workers to be admitted annually for a 2-year trial period. The Labor Department would be responsible for allocating the 50,000 job slots among the states which certify that there is an inadequate supply of American workers.

We had a guest worker program in this country for some 13 years -- from July 1951 to December 1964. That program, known as the bracero program, was instituted when the unemployment rate was 3.3 percent and there were 2 million unemployed persons in the United States. At that time, the case was made that with a relatively small number of unemployed, it was virtually impossible to meet the seasonal needs of employers who use temporary workers for limited periods of time.

The bracero program was abolished by the Congress in 1964, in part, at least because unemployment had remained at or above 5 percent for a 7-year period, and there was reason to believe that a guest worker program, with its attendant problems, was neither essential nor desirable.

If the Congress eliminated the bracero program when unemployment had risen to 3.8 million workers and the unemployment rate was 5.2 percent, it is difficult to understand why a "guest worker" progam is being considered today when we have 8 million unemployed and an unemployment rate of 7.5 percent (September, 1981).

We are aware that there may be a few problems in recruiting seasonal workers for certain jobs even when the pool of unemployed workers is 8 million, but we insist that the problem is one of wages and working conditions.

We urge you to reject the undocumented but oft-repeated charge that temporary foreign workers must be brought into the United States to take jobs which American workers refuse to take. The charge is a fiction. In fact, in a news story on April 29, the Los Angeles Times reported on a recent poll which found that 75 percent of unemployed Americans would apply for and accept menial work paying from $3.35 an hour (the federal minimum wage) to $4.50 an hour. I might point out that $4.50 an hour for a full-time year-round worker yields an annual income of just barely above the poverty level for a family of four.

We should like to take this opportunity to respond to those who claim that American workers would refuse to work in remote areas and that wages are not the issue. The adequate supply of workers for the building of the Alaskan pipeline should demonstrate that wages indeed are the issue.

We are convinced that fair wages and decent working conditions would solve most so-called labor shortages and we are even more convinced that the program being proposed would generate significantly more problems than it would solve.

Mr. Chairman, the temporary guest worker program is being advocated as a means of stopping the flow of illegal immigrants into this country. However, if the bracero program taught us anything, it should have taught us that even when a half million braceros were being admitted to the U.S. legally, more than twice that number of illegals were being picked up by the Immigration and Naturalization Service.

Furthermore, European experience with guest worker programs should teach us the problems which such programs generate. Although European countries discontinued the importation of foreign workers in 1973, illegals continued to enter those countries. European experience is clear evidence of how difficult it is to discontinue a guest worker program when a need no longer exists for additional workers. European experience also demonstrates the racial clashes between domestic and foreign workers when both are competing for a limited number of jobs. Such problems, virtually unknown in many parts of Europe before the era of guest worker programs, are now widespread.

The proposal for a guest worker program recognizes some of the problems which arise under such programs, but the use of certain words of art in describing the standards do little to explain what the program would require. For example, the program notes that "normal" wage and working standards would apply but does not define "normal". In fact, despite considerable experience in the field of labor standards, I have never encountered the word "normal" as applied to a standard for wages or working conditions.

Also, our experience with guest worker programs would lead us to require more than an assertion by a state that they require guest workers. We are not reassured by the requirement that guest worker jobs would be excluded in a state only if the state certifies that there is an adequate supply of American workers. I do not wish to sound cynical but I can foresee instances in which states might well interpret the word "adequate" to mean workers who will work at substandard pay under poor conditions and, lacking a pool of such workers, would feel justified in asking for guest workers. There is nothing in the program which restricts it to farm workers. Workers could be brought in to work in the textile and apparel industries as well as in hotels and restaurants, and in skilled and unskilled jobs.

We note that the advocates for this program see it as a means of improving relations between Mexico and the United States. However, the National Committee for Full Employment, a coalition of church, civil-rights, Hispanic Americans and labor groups have said that "it makes no sense to bring additional workers to the United States when there are 8 million unemployed." Other groups have opposed the program because they foresee the creation of a group of employees ripe for exploitation.

To my knowledge the Mexican government has not taken an official position on the issue but the Mexican Trade Union movement has indicated opposition to the program.

Also, Mexican officials have expressed concern not only that they might lose workers with needed skills but also concern with the social problems which would be generated by requiring that guest workers leave their spouses and minor children at home.

The AFL-CIO has frequently stated its support for a coordinated, integrated immigration policy. We have also endorsed the use of strong and effective federal sanctions against employers who hire illegal immigrants, including injunctions backed by criminal penalties for repeat violators. We do not view the guest worker program as a means of stopping or even reducing illegal immigration. We see it only as aggravating our already serious unemployment problem and as a tool for undermining wages and working conditions.

We have previously stated and we wish to take this opportunity to repeat that a thorough review and overhaul of the Nation's immigration policy is long overdue. The AFL-CIO pledges that organized labor will taken an active role in the effort to pass constructive legislation.

Attached is the statement by the AFL-CIO Executive Council on Immigration Reform issued on August 5, 1981.

Statement by the AFL-CIO Executive Council
on
Immigration Reform

August 5, 1981
Chicago, Ill.

There are few more important responsibilities entrusted to the federal government than control of immigration. Yet this nation's immigration policy is, and for many years has been, in disarray. A thorough review and overhaul of that policy is long overdue.

While we are deeply concerned by several shortcomings in the proposal put forth by the Administration, it provides a basis for action.

We, therefore, urge the Congress to come to grips with and provide sound solutions to the difficult social, political and economic problems involved. The AFL-CIO pledges that organized labor will take an active role in the effort to pass constructive legislation.

The key to controlling illegal immigration is an effective system of sanctions against employers who hire illegal immigrants, including injunctions backed by criminal contempt for repeat violators. In turn, the basis for such a system is counterfeit-proof identification such as a secure Social Security card. The Administration's proposal for civil sanctions where the employer has not acted in good faith relies on documents easily counterfeited and freely available for sale. These sanctions will not be even a minor inconvenience to those who hire illegal workers. We will continue to press for an effective system of sanctions, based on counterfeit-proof identification, against employers who knowingl employ illegal immigrants.

Effective border control and interior enforcement are also essential. To achieve such control and enforcement, additional funding and staffing for the Immigration and Naturalization Service are necessary. We support, too, the efforts of INS workers through their union organization to call attention to the need for additional resources and for a clear sense of agency purpose.

The AFL-CIO supports a fair and generous program to legalize the status of illegal immigrants who have become part of the American community so long as that program operates in tandem with an effective program for cutting off the further flow of illegal immigration. Conditions consistent with a compassionate regard for the families involved should be set with a minimum of formality to make citizenship possible for individuals who presently have a strong attachment to this country while not encouraging illegal immigration in the future.

We, therefore, have serious reservations about the Administration's "amnesty" proposal. [illegible] believe the basic preconditions that would unfairly apply to illegal immigrants and not to the Cuban or Haitian refugees are wrong and that a 15-year waiting period, a denial of reunification of families, payment of taxes without the right to the earned benefits accorded other taxpayers such as unemployment compensation, and a novel requirement of English language proficiency are so harsh as to belie the very concept of amnesty.

Over the long run and after illegal immigration is controlled, we support the concept of expanded legal immigration. But first we must cure our unemployment problems and absorb into our society the millions of illegal immigrants and refugees who have arrived during the past decade.

Immigration Reform

We are opposed to the Administration's proposed guest worker program. We reiterate what we have said before: The AFL-CIO is against any program which would permit importation of foreign labor to undercut U.S. wages and working conditions. A guest worker program will make the already high level of unemployment even worse and will undermine the already low level of wages in those industries that are most likely to employ such temporary workers. Women and minority workers are most likely to suffer job loss and income cuts.

We also oppose the Administration's suggested revision of the H-2 (temporary worker) program, a revision that will surely result in the program's expansion. The Select Commission on Immigration and Refugee Policy stated "that government, employers and unions should cooperate to end the dependence of any industry on a constant supply of H-2 workers."

The proposed 50,000 a year guest worker program and the changes in the H-2 worker certification requirements must be assessed in combination with the suggested 40,000 a year increase in legal immigration from Mexico and Canada. With the H-2 workers, the total increase will be more than 100,000 immigrants a year, far more than present conditions justify.

Finally, we call on the Congress in considering the overall question of immigration to assure that the Government has ample authority to continue its historic policy of providing refuge to the victims of political oppression.

The AFL-CIO will continue to work for an immigration policy that is humane, compassionate and consistent with the needs and aspirations of American workers.

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Senator SIMPSON. Mr. Geffert please.

STATEMENT OF GARRY G. GEFFERT, STAFF ATTORNEY, WEST VIRGINIA LEGAL SERVICES PLAN, INC., ACCOMPANIED BY H. MICHAEL SEMLER, MIGRANT LEGAL ACTION PROGRAM

Mr. GEFFERT. Good afternoon. My name is Garry Geffert. I am an attorney with the West Virginia Legal Services Plan in Martinsburg, W. Va. With me today is Michael Semler, from the migrant legal action program, who will assist in answering any questions you might have after I have completed my oral statement.

I have worked in West Virginia since September 1, 1980. I was previously a staff attorney with Florida Rural Legal Services for 3 years. Most of my legal practice has been on behalf of migrant and seasonal farmworkers. Through my clients and other farmworkers I have seen some of the effects on U.S. workers of temporary foreign worker programs and sanctions on employers who hire undocumented alien workers.

INABILITY OF U.S. WORKERS TO OBTAIN JOBS

I would like to talk briefly about two of the effects today, the inability of U.S. workers to get jobs and the depression of their wages. Martinsburg is in the middle of West Virginia's eastern panhandle. Apples are the major crop. They are harvested by hand, so there is a need for labor during the months of September through November.

But many of those jobs are closed to U.S. workers. About 50 of the 140 orchards in the area where I work obtain harvest labor from the same source, one farm labor contractor corporation. Almost all the workers supplied by that corporation are Jamaican nationals brought into the United States for harvest under the H-2 program.

Last year the H-2 employer in Martinsburg requested permission to import 578 foreign workers. It was granted certification to employ 578 foreign workers. It had apparently been unable to recruit even one worker in the United States.

Yet I represent 19 workers who sought work with that employer during the 1980 harvest season but who were not hired. The reason they were not hired was because they could not prove their citizenship to the satisfaction of the employer. That result stems from the deliberate misuse of the prohibition in the Farm Labor Contractor Registration Act against the hiring of undocumented workers by farm labor contractors.

Of the 19 workers I represent, 13 are Haitian refugees. All had been authorized by the Immigration and Naturalization Service to accept employment. All but one had the document proving that authorization on his or her person, but none were hired. Two other of my clients each had citizenship documents supplied by the local employment service. Another had a certificate of residence issued by a State authority, reciting the fact of his birth in the United States. Other workers had only the kinds of documents carried by most U.S. citizens in their wallets.

All were denied employment. All of those workers got the message from the H-2 employer last year: U.S. workers are not wanted there.

All farm labor contractors are subject to the same regulations, but farm labor contractors who hire U.S. workers tell me they help workers obtain the necessary work documents. The H-2 employer makes no such effort. It does not need to. Its needs will be met by a work force on which no unemployment or social security taxes are paid, without the kind of effort other farm labor contractors make to recruit U.S. workers.

This year a new tactic appears to be used for the disposing of U.S. workers in West Virginia. It is a production quota. My clients told me that they were put to work where the trees are tall and where fruit on the trees is sparse, making it impossible to meet their production quota. Several of my clients told me they were fired for failure to meet the quota. Many workers have told me that the trees on which the fruit is abundant are reserved for the foreign workers.

By law, if a U.S. worker works for 15 days for the H-2 employer, the worker is entitled to reimbursement of his transportation and subsistence expenses incurred in getting to West Virginia. By disposing of the U.S. worker quickly, the H-2 employer avoids this expense.

My clients told me of a husband and wife who came to Martinsburg from southern West Virginia. They wanted to work. When they arrived at the H-2 employer's labor camp, they were hired, but the woman was told she would have to sleep in the barracks with the men. After one night in the barracks with more than a dozen men, the couple left for home. Neither those workers nor anyone they tell about their experiences can be expected to seek work in the West Virginia apple harvest in the future.

One supposed protection from the U.S. worker is the adverse effect wage rate. That rate is expressed in terms of dollars per hour and is adjusted annually. Since apple harvesting is done by piece work, the adverse effect wage rate must be converted to a piece rate basis. The regulations state that if the adverse effect wage rate goes up, the employer must increase the piece rate it offers accordingly.

The adverse effect wage rate in West Virginia increased by 10.36 percent from 1980 to 1981. But the piece rate offered by the H-2 employer near Martinsburg did not increase at all.

A more obvious violation of the regulations is difficult to imagine. Yet the Federal and State agencies administering the H-2 program in West Virginia had each approved that wage.

U.S. workers are available and willing to work, but they will not come to West Virginia to work for H-2 employers as long as wages are kept artificially low and actions are taken by the employer to discourage them from seeking and keeping jobs.

Thank you. I also have a longer written statement that I would appreciate being incorporated into the record.

Senator SIMPSON. It certainly shall.

[The prepared statement of Mr. Geffert follows:]

STATEMENT OF GARRY G. GEFFERT

Good afternoon, members of the Subcommittee. My name is Garry G. Geffert. I am an attorney with the West Virginia Legal Services Plan, Inc., in Martinsburg, West Virginia. I have worked there since September 1, 1980. I was previously a staff attorney with Florida Rural Legal Services, Inc., Wauchula, Florida, for three years. Most of my legal practice has been on behalf of migrant and seasonal farmworkers.

Through my clients and other farmworkers, I have seen some of the effects on U.S. workers of temporary foreign worker programs and sanctions on employers who hire undocumented alien workers. I will talk about two of the effects today: the inability of U.S. workers to get jobs and the depression of wages.

Martinsburg is just 90 miles from Washington, D.C. It is in Berkeley County, the middle of the three eastern-most counties of West Virginia's Eastern Panhandle. Apples are the major crop. They are harvested by hand, so there is a need for labor during the months of September through November. But many of the jobs are closed to U.S. workers.

About 50 of the 140 orchards in the three-county area where I work obtain apple harvest labor from the same source: one farm labor contractor corporation. Almost all of the workers supplied by that corporation are Jamaican nationals brought into the U.S. for the apple harvest under the temporary labor certification program, commonly known as the "H-2" program.

Last year, the H-2 employer in Martinsburg requested permission to import 578 foreign workers. By law, H-2 employers are supposed to recruit workers within the United States for 60 days. The number of workers recruited is subtracted from the number of workers requested and the U.S. Department of Labor then certifies the employer for the number of workers still needed.

In 1980, the farm labor recruiting corporation in Martinsburg was granted certification to employ 578 workers --

the growers had apparently been unable to recruit even one worker in the United States. Yet, I represent 19 workers who sought work with that employer during the 1980 season, but who were not hired. The reason they were not hired was because they could not prove their citizenship to the satisfaction of the employer.

That result stems from the deliberate misuse of the prohibition in the Farm Labor Contractor Registration Act (FLCRA) against the hiring of undocumented aliens by farm labor contractors. 7 U.S.C. § 2044(b)(6). FLCRA is the only federal employment law now containing such employer sanctions. The regulations require a farm labor contractor to make a "bona fide inquiry" to determine that an individual is either a U.S. citizen or an alien who is lawfully permitted to accept employment in the United States. Many classes of aliens are permitted to work under U.S. law. The regulation lists documents which are "deemed" evidence of a bona fide inquiry. 29 C.F.R. § 40.51(p). These regulations have been used as an excuse to deny employment to U.S. workers.

Of the 19 workers I represent, 13 are Haitian refugees who were desparately seeking work to support themselves. All had been authorized by the Immigration and Naturalization Service to accept employment; all but one had the document proving that authorization on his or her person, a document that is designated as acceptable proof of lawful work status by the FLCRA regulations. The employer talked first to the one worker who spoke English and interpreted for the others; that worker was also the one who had lost his document. The H-2 employer refused to even look at the documents the other 12 workers had. He would not hire any of them.

Two other of my clients each had documents supplied by the local state employment service office which were sufficient to prove their citizenship under the FLCRA regulations. Neither was given a job. Another U.S. citizen worker had a "Certificate of

Residence" issued by a state authority reciting the fact of his birth in the United States. He was not hired by the H-2 employer. Other workers had only the kinds of documents carried by most U.S. citizens in their wallets. They were denied employment because they could not prove their citizenship.

None of these 19 individuals was able to find more than a few days' employment with any of the 90 orchardists in the area who do not use foreign labor. All those orchardists had all the workers they could use. Not surprisingly, only 2 of those 19 workers returned to West Virginia for 1981 apple harvest. Neither sought work from the H-2 employer. All the workers got the message from the H-2 employer last year: U.S. workers are not wanted.

All farm labor contractors, including the farm labor contractor corporation in my area that uses H-2 labor, are subject to the same regulations concerning documentation of the employment status of workers. But other farm labor contractors I have talked to take a different approach with the workers. If a worker does not have one of the documents listed in the FLCRA regulations, the farm labor contractors who hire U.S. workers help him get it. The H-2 employer makes no such effort. It doesn't need to. Its needs will be met by a work force on which no unemployment or social security taxes are paid, without the kind of effort other farm labor contractors make to recruit workers.

This year, a new tactic for disposing of U.S. workers is being used in West Virginia. Workers are hired, but then fired a few days later for failure to meet a production quota.

Unless the trees are short, apples are picked from a ladder. The worker sets the ladder up against the tree and then, with a sack slung over his shoulder, climbs up the ladder and picks until his sack is full or until he must move the ladder to reach more fruit. When he fills his sack, he dumps it into a bin. The fewer times the worker must move the ladder to reach enough fruit to fill his picking sack, the faster he will be able to pick.

My clients who worked, briefly, for the H-2 employer near Martinsburg this year have all reported that they are told by the employer that they must meet a quota of 80 boxes of fruit each day. My clients told me that they are then put to work where the trees are tall and where fruit on the tree is sparse. They are instructed to pick the tree clean. They therefore must spend large amounts of time just moving the ladders to get at the fruit, making it impossible to meet the production quota. Several of my clients were fired for failure to meet the quota. Many workers have told me that trees on which the fruit is abundant are reserved for the foreign workers.

One small group of workers who recently left the H-2 employer because of poor working conditions told me that they would often have to pick 2 or more trees to fill a 23 box bin. (Each box equals 1 and 1/8 bushels.) Those workers were able to obtain another job picking apples. At their new employer's orchard, they are able to fill nearly two bins, each containing 22 boxes, from one tree. And, they are being paid a substantially higher rate for each box picked than they received from the H-2 employer.

Several workers who previously left the H-2 employer said they worked from 8 a.m. until 5 p.m., eating lunch on the run so they could pick as many apples as possible from the poor trees in an attempt to get close to the production quota. They later learned that the H-2 employer had credited them with only a portion of the hours they actually worked. The leader of thse workers said it was her first time picking apples in West Virginia. She also said it would be her last.

By law, if a U.S. worker works for 15 days for the H-2 employer, the worker is entitled to reimbursement of his transportation and subsistence expenses incurred in getting to

West Virginia. By disposing of the U.S. worker quickly, the H-2 employer avoids this expense. Many of the workers who were terminated this year have had to rely on emergency welfare assistance for transportation back home. (One wonders what will happen to people in that situation next year under the reduced welfare budgets.) It is doubtful that any of the workers fired this year, or anyone they may talk to about their experience, will ever again seek work in the West Virginia apple harvest.

My clients related yet another way that U.S. workers are actively discouraged from taking jobs with the local H-2 employer. A husabnd and wife came to Martinsburg from southern West Virginia. They were unemployed and had been told about the apple harvesting jobs by the employment service office in their area. They wanted to work. When they arrived at the H-2 employer's labor camp they were hired, but the woman was told she would have to sleep in a barracks with the men. After one night in the barracks with more than a dozen men, the couple left for home. The couple had been told by the employment service that there would be separate housing for women; in fact the H-2 employer has in each of the past four years signed a statement that says it complies with federal regulations requiring separate sleeping facilities for each sex. Neither that couple, nor anyone they tell about their experience, can be expected to seek work in the West Virginia apple harvest in the future.

There are legal requirements which are supposed to protect U.S. workers from an adverse impact on wages and working conditions that an influx of foreign workers causes. Those supposed protections are ineffective and largely unenforced.

Employers must make certain written assurances as a condition of obtaining foreign labor. One assurance is that the employer will comply with all applicable federal and state labor laws, yet workers tell me they are regularly credited with fewer hours than they actually worked; and there is no action taken against the employer.

The employer must assure that he will provide employment to all qualified workers in the United States who apply for it. Yet when a finding was made last year that the H-2 employer in my area had refused to hire a qualified U.S. worker who had all necessary identification, the enforcing agencies made no effort to make the employer comply with his assurance by hiring the workers, nor did it require any restitution for the work lost by the U.S. worker. The employer merely had to sign a statement in which it denied having done anything wrong and promised to comply with the law in the future. With that statement, all was forgiven by the enforcement agencies.

U.S. workers are supposed to be offered terms and conditions of employment and fringe benefits at least equal to those provided foreign workers. Foreign workers, by their contract, pay two percent of their wages for health insurance. No such insurance is even offered the U.S. worker. If he becomes ill from a cause which is not job-related, he is on his own.

Another supposed protection for the U.S. workers is the adverse effect wage rate (AEWR). The AEWR is a special minimum wage imposed only on H-2 employers. It is supposed to ensure that foreign workers do not depress wage rates. The AEWR is expressed in terms of dollars per hour, and is adjusted annually. Since apple harvesting is done by piece work, the AEWR must be converted to a piece rate basis. The regulations state that if the AERW goes up, the employer must increase the piece rate it offers accordingly. 20 C.F.R. § 655.107. That provision is presently being ignored in West Virginia by the responsible federal and state agencies. The AEWR in West Virginia increased from $3.28 per hour in 1980 to $3.62 per hour for 1981, a 10.36 percent increase. But the piece rate offered by the H-2 employer near Martinsburg did not increase at all. A more obvious violation of the regulation is difficult to imagine. Yet the federal and state agencies administering the H-2 program in West Virginia have each approved that wage.

A crewleader who left the local H-2 employer this year because of poor wages for her and members of her crew told me that she had tried to get a job recently with an apple orchard near Chambersburg, Pennsylvania. Chambersburg is less than 60 miles from Martinsburg. That orchard was paying 40 cents per box of apples picked, plus a 4 cents bonus at the end of the season for those who stayed until the end. The rate paid by the H-2 employer in Martinsburg is 36 cents per box. There are no temporary foreign workers needed in the apple orchards of Pennsylvania.

U.S. workers are available and willing to work. But they will not come to West Virginia to work for the H-2 employer as long as wages are kept artifically low and actions are taken by the employer to discourage them from seeking and keeping jobs.

Senator SIMPSON. Arnold Torres, please.

STATEMENT OF ARNOLDO S. TORRES, EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS—LULAC

Mr. TORRES. I would like to thank the subcommittee for allowing us to testify on this very controversial issue. We would like to submit our written testimony for the record and basically summarize the supplement that we submitted the other day.

Senator SIMPSON. Without objection.

Mr. TORRES. We would like to briefly go over some of the statements that have been made by the administration's representatives with regard to the proposed 50,000 experimental program. They have indicated that they are proposing this as one of five measures to regain control over the unlawful entry of foreign nationals into our Nation and our labor market.

UNLAWFUL ENTRY OF FOREIGN NATIONALS

We would like to specifically know that as one of the five measures, how is this temporary worker program actually going to allow this country to regain control over the unlawful entry of nationals into the Nation and labor market? I do not think that that has been answered very well today.

Also, the statement that the administration indicates that they would increase the labor law enforcement, the moneys that have been requested under the proposed plan, in our assessment and our analysis, are only a restoration of the funds that were previously cut.

In addition, the administration has indicated that States wishing to participate in the experimental program would determine, for each fiscal year, the labor shortages in their State.

You indicated or you made some questions of the administration witnesses earlier today, and we would only ask that those questions be further pursued with more specifics being requested from the administration.

I think that you would find that for the most part it appears as though the program is being tailored for maybe one or two Governors in the Southwest that want absolute control over the number of people they can bring in.

Furthermore, the logic somehow is not there when they indicate that they will import temporary workers in other occupations which would not adversely affect their—meaning States'—labor markets. There seems to be—I do not know why they want to import labor in other occupations which would not adversely affect that labor market. It is most probable, in our opinion, that there is domestic labor that would be able to take those jobs.

We also do not know how they specifically intend to or how they would assess the effectiveness of the program. They have indicated that after a 2-year period they would study or evaluate the 2-year experimental program and make a decision as to whether to continue or expand.

It appears as though they have forgotten that perhaps the program will not work, but they did not say anything about terminating the program, they merely said they would continue or expand it. So I think this raises some serious questions as to their honest intentions about the program. We do not see a need for an additional program.

You have heard in the previous panel the representative from the Western Range Association which indicates a need for sheepherders. I think that there is a definite need for specialized labor needs in this country that are not being met by the domestic labor market and regardless of how high you increase the wages, they are just not going to be able to find workers.

I think a case in point is by the statement being made by the gentleman from Wyoming. I think that there is a very strong desire to train people, as evidenced by the testimony. And that is why we have proposed in our written testimony an alternative for dealing with any potential labor shortages.

We feel that the Federal Government should study—I know how you hate studies—but we already have an H-2 program. The H-2 program would, in effect, continue. We would like to see a number of protections, those that would stop the type of abuses that Garry has mentioned just now, so that you have a mechanism which addresses this need.

And more importantly, you would have to assess properly whether in fact those labor shortages are employer-manipulated or in fact they are part of the labor market dynamics. The last point is primarily our concern, that the American labor supply be retrained, and, in fact, relocated, in those cases where it is feasible. And where not, an H-2 program is appropriate to be used.

But to come in here and tell us that they need a 50,000 guest worker program, I think that is asking a little bit too much to expect us to believe that this proposal will have a serious and positive impact on the flow of undocumented workers in this country. It would just make things worse.

Thank you.

Senator SIMPSON. Thank you very much.

[The prepared statement of Mr. Torres follows:]

Statement of Arnold S. Torres

We offer the following testimony as a supplement to our initial written material submitted to the Subcommittee.

We would like to focus our comments on the Administration's proposed temporary guest worker program which calls for up to 50,000 Mexican nationals for a two-year trial period. The Administration's representatives indicate that this program is "one of five measures ... to regain control over the unlawful entry of foreign nationals into our nation and our labor market." We would ask specifically how such a program will stymie the flow of undocumented workers in view of the historical facts of temporary worker programs which indicate that the opposite has occurred? These same representatives contend that, "Viewed from a labor-market perspective, the large-scale legalization program and the small-scale experimental foreign worker program are intended to help cushion the otherwise disruptive labor-market adjustments, both at home and abroad, to the substantial reduction in job opportunities for undocumented workers, which employer sanctions and increased labor law enforcement will produce."

Why should an additional temporary worker program be initiated when there is in place the H-2 program and it is anticipated that the proposed legalization program will bring in new workers? We also question whether in fact there will be increased labor law enforcement for as we analyze the Administration's position, it is proposing only a restoration of funds previously cut in the President's budget requests for FY 1982.

The Administration has indicated that "...States wishing to participate in the experimental program would determine for each fiscal year the occupations with an adequate supply of qualified and ready to work U.S. workers and the number of alien workers for whom employment in other occupations would not adversely affect their labor market.

WE QUESTION THE REASONS FOR ALTERING HOW LABOR SHORTAGES ARE ASSESSED FROM THAT WHICH THE H-2 PROGRAM NOW FOLLOWS OF ASSESSING WHETHER DOMESTIC LABOR SUPPLY IS AVAILABLE TO WORK UNDER PROPOSED CONDITIONS THEN HAVING THE U.S. DEPARTMENT OF LABOR VERIFY THAT SUCH LABOR SHORTAGE DOES EXIST. WHY SHOULD ALIEN WORKERS BE IMPORTED FOR EMPLOYMENT "IN OTHER OCCUPATIONS WHICH WOULD NOT ADVERSELY AFFECT THEIR (STATES) LABOR MARKET?" IS IT NOT MOST PROBABLE THAT DOMESTIC LABOR WOULD WORK IN SUCH OCCUPATIONS?

IN ADDITION, AS WE UNDERSTAND THE ADMINISTRATION'S PROPOSAL, GOVERNORS OF STATES WISHING TO PARTICIPATE IN THIS PROGRAM WOULD IN ESSENCE BE RESPONSIBLE FOR ASSESSING THE LABOR SHORTAGES AND CERTIFYING THE NEED FOR TEMPORARY WORKERS. HOW ARE GOVERNORS IN A POSITION TO EFFECTIVELY ASSESS AND CERTIFY SUCH MATTERS? WHAT SPECIFIC PROCESS OR PROCEDURES WILL GOVERNORS FOLLOW FOR COMPLYING WITH SUCH RESPONSIBILITY NOT POSSESSED PRIOR TO THIS PROGRAM?

ANOTHER CONCERN WHICH WE HAVE WITH THE ADMINISTRATION'S PROPOSAL IS IN ITS STATEMENT THAT "THE DEPARTMENT'S EVALUATION OF THIS TWO-YEAR EXPERIMENTAL PROGRAM WOULD BE USED AS THE BASIS FOR A DECISION AS TO WHETHER TO CONTINUE OR TO EXPAND THE SIZE OF THIS TYPE OF FOREIGN WORKER PROGRAM."

WHY IS THE ADMINISTRATION ONLY CONSIDERING "TO CONTINUE OR TO EXPAND THE SIZE" OF THIS PROGRAM AND HAS OMITTED THOUGHT TO REPEALING THE PROGRAM SHOULD IT NOT MEET EXPECTATIONS? THIS OMISSION RAISES SERIOUS QUESTIONS AS TO REAL INTENTIONS UNDERLYING THIS PROPOSAL.

FURTHERMORE WE ARE EXTREMELY CONCERNED WITH THE RIGHTS AND PROCEDURES FOR PROTECTING THE RIGHTS OF TEMPORARY WORKERS. RECENTLY, WE HAVE WITNESSED A SERIOUS EROSION BY CONGRESS OF THE JURISDICTION OF LEGAL SERVICE CORPORATION AND ITS FIELD PROGRAMS; IT APPEARS THAT LEGAL AID LAWYERS WILL NO LONGER BE ALLOWED TO REPRESENT

TEMPORARY WORKERS UNDER THE H-2 PROGRAM AND WILL THIS BE THE SAME SITUATION CONFRONTING ANY NEW WORKERS IN THIS STATUS? WHAT WILL BE THE MECHANISM FOLLOWED FOR PROTECTING THE RIGHTS OF THESE WORKERS WITHOUT HAVING THEM FEAR FOR LOSS OF EMPLOYMENT? WILL NECESSARY MONIES BE MADE AVAILABLE TO INSURE THAT THEIR RIGHTS ARE PROTECTED?

AS YOU GATHER FROM OUR LIST OF CONCERNS THERE REMAIN MANY QUESTIONS TO BE ASKED AND ANSWERED OF THE PROPONENTS OF ANY TEMPORARY GUEST WORKER PROGRAM. PERHAPS NOT UNTIL SUCH TIME WHEN THEY HAVE BEEN ADDRESSED WILL WE BE ABLE TO BETTER UNDERSTAND THE ADMINISTRATION'S PROPOSAL AND RECOGNIZE THE UNNECESSARY PROBLEMS IT WOULD PRESENT TO IMMIGRATION MATTERS AND TO THE DOMESTIC LABOR MARKET. WE WOULD URGE THAT OUR COMMENTS BE CONSIDERED WITH THOSE OF OUR INITIAL WRITTEN TESTIMONY.

THANK-YOU.

ENCOURAGED USE OF TEMPORARY WORKERS

Senator **SIMPSON**. Mr. Perez, you testified that fiscal incentives within the H-2 program encouraged the use of temporary alien workers over the U.S. farmworker. Could you expand a bit on that for us?

Mr. **PEREZ**. Generally, Senator, what it means is that there are certain benefits that the employer would have to pay U.S. workers which would not have to be paid to the H-2 worker. So if you talk about the kind of cost the employer incurs in hiring a U.S. worker versus a foreign H-2 worker, then the cost is decidely lower for the foreign worker. There is an economic incentive to hire them.

Senator **SIMPSON**. You also use a term—and I think we should have an explanation in the record and I think you can render it—you criticized the H-2 programs' use of the phrase "adverse-effect wage rate." Would you please explain that concept and why you think it would be a flawed approach?

ADVERSE-EFFECT WAGE RATE

Mr. **PEREZ**. The adverse-effect wages focuses on the kinds of workers that come in, like the apple harvest, and their impact on the wage structure. In other words, if you want to hire workers, you have to look at the adversely affected wages involved and how they would be affected by people coming in from outside.

We do have an expert on that sitting at the end, Mr. Semler, who has worked diligently and very hard in this area.

Senator **SIMPSON**. Would you care to address that, Mr. Semler?

Mr. **SEMLER**. Yes, Senator. Thank you.

To introduce an expanded number of workers to a market would otherwise reduce the wages that could be demanded by the workers that are there. So the Department of Labor has come up with the concept of the adverse-effect wage rate to attempt to offset that.

The Department of Labor sets for each State a single adverse-effect wage rate for the whole State each year, and each employer must insure that each worker, domestic or foreign, who works for the H-2 employer receives that at least each hour. If he does not earn it through his piece rate earnings, then there must be a makeup pay to reach this. And in most cases, it is above the Federal minimum wage.

The problem with it the way it works is that it is set on a statewide basis, so that it considers the wages in all crops all over the State. The effect of that is that it does offset to a certain degree the introduction of a new larger work force but it does not offset it at all totally.

For example, in West Virginia, when you introduce 500 workers during a season where there are 2,000 workers total throughout the State in apples, obviously the wages of those other 2,000 workers have also been depressed. So when you look at the apple wages, you see what your average earnings were for the last year, and that figure has been depressed.

The second problem is that in some industries, such as apples, the wages are above the average for the State. Apples in Virginia, you would earn more than if you were working in tobacco, but all this is lumped together and we get a single figure for all crops. So that those employers who pay more, those employers in certain crops, like apples, that have a short term, that are isolated and hard work, where the wages should be more, they are dragged down by the use of a statewide average.

The result is that the employers, for example, in New York State, who use H-2 workers, pay less than their neighbors who do not use H-2 workers.

TEMPORARY WAGE PROGRAM

Senator **Simpson**. Are there any conditions that you foresee in which you would favor a temporary worker program, either transitional or permanent?

Mr. **Perez**. Yes; as I indicated, I think we have to look at this from the perspective of a national interest and critical need. We don't argue absolutely that there ought not be a program. What we are saying is that that program ought to be based on the policy and the policy ought to be based on a concept that it is to our national interest to do so, or that certain sectors of the economy are being hurt because of the lack of workers.

I tried to show today that in fact there is no national interest involved. There is no war going on. And secondly, all the projections of the Department of Labor indicate a need for jobs, not workers in the agricultural sector.

DEPENDENCY ON FOREIGN LABOR

Senator **Simpson**. Mr. Allstrom, many U.S. employers seem to become dependent on foreign labor. Do you feel that this use of foreign labor should be ended abruptly or that we should have kind of a phaseout through the use of a transitional type of forum or temporary worker program?

Mr. ALLSTROM. Senator, I imagine we are talking about two different questions, the legal dependence on H-2's, and perhaps the illegal dependence on undocumented workers. In terms of the legal dependence, the AFL-CIO has always recognized that there are certain very particular situations like the sheepherders where an H-2 program might be necessary. We mean those employers for whom that kind of dependence is probably not a satisfactory way of proceeding.

On the other hand, we support, along with most members of this committee, the recommendation of the Select Commission last year that we begin to start moving the country away, all industries away from dependence on H-2 workers.

When the bracero program was inaugurated during a period of wartime emergency, an extreme shortage of labor, there was a maximum of 75,000 people involved. We have seen a much greater dependency on both illegal and legal programs, not programs but legal and illegal employment of foreign nationals, and that sort of dependency is clearly something that we should be getting away from in a period of tight money and increasing unemployment. These seem to be much higher national priorities.

Senator SIMPSON. One of the problems in the whole issue is that right now it is not illegal for employers to hire illegal aliens. Therefore, I think employers have become dependent without in any way breaking the law. That is part of the issue throughout.

Let me ask you this. It has been claimed that if most illegals were given legalization, that they would then no longer remain in their current jobs, thus depriving their employers of the foreign labor that they allegedly have acquired and creating, then, the need for a large temporary worker program.

Some people have suggested that total amnesty—and I don't want to use that word again—legalization should be provided to only a small portion of the illegal persons in the country and that most of them should then be given some kind of temporary worker status. Supposedly that would provide the transitional work force actually needed by employers to get over this hurdle without implementing a large temporary worker program to bring in new foreign workers.

What do you think of that?

Mr. ALLSTROM. Well, that is an element of the administration proposal, I believe, the temporary resident status, and there is a very significant problem with that. It is simply that the duration, the 10-year period of limbo that these people would be placed in while they are paying the same taxes that everyone is required to pay while not being allowed to be with their families and not being allowed to enjoy the benefits of full citizenship, seems an awfully long period of time to be a semicitizen in this country.

That period of dependency on the whim of either Federal law or their employer seems to be an unfortunate and rather ridiculous way of proceeding toward legalization of people. You are not going to attract a lot of people to that kind of limbo, and the idea of a legalization/amnesty program would be to bring these people aboveboard. We need to attract them.

Senator SIMPSON. I am just wondering if you thought that if we took a small segment of those in the legalization process, that they could be the transitional persons in the work force.

Mr. ALLSTROM. You mean a small segment of that total illegal population, and the rest would be legalized?

Senator SIMPSON. We are not saying what happens to the rest of them. Just take a small segment and use them for the transitional work force.

Mr. ALLSTROM. Well, transitional work force sounds like a good term, but the idea of a citizen without full rights does not sound like a good term.

Senator SIMPSON. I agree.

Mr. ALLSTROM. And I would support the idea of bringing all of these people on board as quickly as possible. To be effective, an amnesty has to be generous, and if we make the process too confusing, we are going to start encouraging people not to come forward, not to enlist in the legalization procedure, and all the problems of exploitation are simply going to be pushed back 5 and 10 more years.

UNWILLINGNESS OF U.S. WORKERS

Senator SIMPSON. That is one of the problems. Any program, whether it is in the legalization area or a temporary worker program, is going to appear confusing to those involved, and therefore they will go back to the normal business as usual unless we do something about that aspect.

You heard the testimony of Mr. Etchepare. He was testifying that the sheep rancher simply cannot obtain these American herders; that we have an open job order at every State agency employment service and that no American sheepherders are available, and consequently temporary foreign workers are needed.

What is your response to that? Do you believe that there are some jobs that simply will not be willingly performed by an adequate number of Americans regardless of the wage?

Mr. ALLSTROM. My impression from his testimony certainly was that there is a severe problem there. I would gather from the experience I had on the staff group of the Select Commission that there are in fact occasional occupational categories which would require some sort of additional help through the H-2 program.

My concern, however, is that all the guarantees that were established in the H-2 program be rigorously enforced. The principal obligation of the Department of Labor and the U.S. Government in this thing should simply be to protect the U.S. citizen, and when that requirement has been met to the satisfaction of the Secretary and the American worker, then we can begin to examine these other needs.

It doesn't seem to be the time at this point, in the middle of such high unemployment, that we should be talking about a potentially massive program. We are concerned that the requirements in H-2 be enforced thoroughly and that those not be weakened.

ABUSE BY H-2 EMPLOYERS

Senator **Simpson**. Mr. Geffert, yours is an interesting bit of information for us. You state that many willing workers are not employed due to the deliberate misuse of prohibition of the Farm Labor Contractor Registration Act against the hiring of undocumented aliens by foreign labor contractors. You state that certain H-2 employers refuse to even look at documents presented by U.S. workers. That is most interesting.

What changes would you recommend in the law or regulations to address that abuse?

Mr. **Geffert**. I feel a little uncomfortable talking outside my experience, so, I would like to limit it to that. The experience of my clients and the people I have talked to that have had the problem is that if there is an employer sanction that requires documentation, especially when that sanction is coupled with a program like the present H-2 system, which contains the economic disincentives that I have been talking about, causes the depression of wages and insures a docile and controllable work force that isn't going to strive to improve the working conditions, that the sort of employer sanction that requires that kind of documentation is going to be used as one means of discouraging U.S. workers from ever returning and taking those jobs.

I don't have any alternative to the employer sanction. It isn't a particularly good idea in the experience of my clients.

Senator **Simpson**. I think you end up coming out where we all come out, whether your expertise is limited or general, and that is, that some kind of employer sanctions are going to have to be here; but we would be appreciative of any views that you have on that. You can furnish them at any time during our deliberations on this issue.

You have stated too that these H-2 workers are used extensively in West Virginia, but that less than 60 miles away in Chambersburg, Pa., there are no temporary foreign workers in the apple orchards, and you state that this situation is going to continue as long as wages are kept artificially low.

POSSIBLE ACTION TO REMEDY PROBLEMS

Do you believe that this difference in the price of a box of apples of 4 to 8 cents, the difference in pay, is the principal reason for the situation? What might be done by the Department of Labor or the Congress to remedy or address that?

Mr. **Geffert**. Well, I think it is certainly a major factor. The difference in wages and the ability of the H-2 employers to fill their labor needs at a lesser rate certainly encourages them to want to hire the temporary foreign workers and then to take some of the measures I have described to discourage U.S. workers from returning. So they don't.

Higher wages do attract people. Let me offer another example. There is another large agricultural employer in the Martinsburg area. I was out at one of the camps visiting some workers and the wage rates were posted that were being paid by that employer. The wage rates were only 2 cents per box higher than the one used by the H-2 employer, yet their camps were full and they had all the workers they needed. So, adequate wages are a strong incentive.

I think Mr. Semler could better address some of the problems and some of the other actions that Congress might take to remedy the problems.

Senator **Simpson**. Do you have some brief observation on that?

Mr. **Semler**. Yes; right now only one-half of the system is being regulated, and that is the U.S. recruitment. No one regulates recruitment in the foreign country. Until that is done, employers will be able to pick an all-male work force of a narrow age range who are experienced, the best prime work force, and who can then be blackballed or sanctioned for complaints or for failure to be perfect workers, and have them delivered to the work site on the exact day that they want them, have them taken away on the exact day they want them taken away.

Given all those advantages, it is almost inevitable that this type of a situation will be preferred. In none of the legislation I have seen does it talk about in detail regulating recruitment in the foreign country. At one time during the bracero period, the United States did get into that, did get involved in selecting the workers and in transporting and guaranteeing the contracts to the foreign workers.

That is something. Minor changes in the Department of Labor's registration of U.S. recruitment would be insignificant until there is some registration of the foreign recruitment process.

Senator **Simpson**. Do you favor the type of contracting that characterized the bracero program?

Mr. **Semler**. I think the question is why are we having a program of this nature? If the purpose is to meet a labor shortage, I think that there must be some way to determine whether there is a labor shortage. The only way to determine that is to actually recruit for a particular job, and then when the worker comes in, see that he works in that job.

I am not in favor of any program like that, but there is no way to address a labor shortage unless the program is like that.

DISPLACEMENT OF U.S. WORKERS

Senator **Simpson**. Mr. Torres, in your testimony you stated that temporary foreign workers displace U.S. workers. The subcommittee is aware of at least one experiment in Los Angeles where the INS conducted a sweep in which a majority of employees of a nonagriculture industry were apprehended. The U.S. Employment Service then rather widely advertised that these jobs were available in order to attract U.S workers, yet there was an absolute minimum of response.

Do you believe that there are certain jobs that Americans will not do at minimum wage levels or will not do at all?

Mr. **Torres**. I would think under certain circumstances there may well be. I think that the question of displacement is brought more into practical considerations from the points that Gary made about the blatant displacement of the U.S. workers or workers that had proper documentation in place of H-2.

I think you have a reality that people have to consider. It is not a very bright thing to try to live on a minimum wage. You can't do it, it has been fairly well substantiated. I would think that virtually any employment that is solely based on the No. 1 wage earner in the family dependent on solely the minimum wage, I would think it is going to be virtually impossible for a person to really look at that job and say I am going to take this job.

I think they will opt for Government assistance if that is at all possible. But I do think it is very important that there be a very strong commitment to increasing the wages at rates that are livable. In some cases it cannot always be done. In some cases it will take perhaps an H-2 worker to come in for specialized type of work.

I think the commitment has to be made to try to improve the wage and working conditions in this country, and I think once you are able to do that, you are in a much better position to actually gage whether in fact there is some kind of malaise, as the previous administration has contended, in American society that has certain types of people not wanting to take certain types of jobs.

I don't think that we can actually make that contention substantively. I think you cite one example and there are other examples you can cite, but I don't think that that is by far the major situation taking place. But I think that until we make a commitment to increase the wages and improve the working conditions for the labor market in this country, we are not going to be really able to gage whether in fact there is a situation where American workers won't take certain jobs.

I think for the most part American workers most definitely will do everything they can do take these jobs if they are livable.

ENCOURAGEMENT TO LEAVE SEASONAL JOBS

Senator SIMPSON. In an organization such as yours with a reputation for representing well the Hispanic community in attempts to improve the upward mobility of your constituency and the constituency of similar groups, is there an encouragement of Hispanics to leave seasonal agricultural jobs?

Mr. TORRES. There is a very strong effort on the part of title III programs, 303, in the country to try to diversify or inject multidimensional skills in people that have largely been located in seasonal types of employment, primarily for the reason that seasonal employment doesn't pay that much and probably never will.

There is not, I would say, a concerted effort to necessarily do away with that. Most people that work as migrant farmworkers have always seen it as a very honorable job. But there is a very strong desire on our part because of the emphasis we put on education to try to get people into blue collar and white collar types of jobs. Also, the major factor for the reason why you find Hispanics or just people going less and less into seasonal types of work is primarily because of the mechanization reality.

I remember we used to pick tomatoes for 23 cents a box. Now you work on the machines for $1.75 all the way up to $2.50 an hour. It depends on if the UFW has been able to organize them in those areas. But there is a very strong shift away from agricultural seasonal employment.

Senator SIMPSON. How do you respond to the assertion that a large temporary worker program with Mexico is the best cost-efficient means of providing the long-term economic assistance and promoting internal stability within certain States of Mexico?

Mr. TORRES. I think on paper that may have some merit, but I think in the practical consideration, that that won't work out, it won't pan out. You will create more problems for this country and perhaps a great deal more animosity between this country and Mexico, and just the general idea of more of a anti-immigrant mentality if you have a temporary guest worker program when you are confronted with high rates of unemployment which are expected to go higher.

To be honest with you, I think there is some great merit to the contention made by the honorable Senator from New Mexico, Mr. Schmitt. He is talking specifically about the migratory flow. He is not talking about necessarily the so-called stereotyped undocumented person. We are talking about an established historical flow of migratory labor from the country of Mexico to this country.

Somehow this establishment flow must be addressed in this immigration policy. A temporary worker program doesn't do that, not with 50,000, not with 100,000 and not with 1 million. I think it is a very difficult thing to do, but I think you have to seriously give some consideration to the thoughts, proposals and statements being made by Mr. Schmitt.

We don't like the idea of temporary guest worker programs because no matter which way you develop them, they are not going to be properly enforced. I want to relate something very quickly to you. Mr. Hayakawa sat before you today and he indicated that the program would be for 5 years, the proposal he has made; that there would be protections, et cetera, et cetera, et cetera.

We look back at the congressional history of how previous temporary worker programs were developed in the 1920's, and the 1940's. Proponents said the same thing. The programs ran without sanction from the Government, and the abuses were rampant.

We are not going to invoke that hyperbole about a bracero program now. We think that it will happen, there is no doubt in our minds, because there is no firm commitment to protecting these people's rights. So you know, we kind of feel as though history is repeating itself. The Dillingham Commission in the 1920's once said that we like Mexicans but we prefer that they work and not stay. I am afraid we are in that kind of a situation today sometimes, and that concerns us.

Senator SIMPSON. You and I have chatted about that.

Mr. TORRES. Yes; that is right. I know that you like Mexicans, Mr. Chairman.

Senator SIMPSON. I understand what you are saying. However, you know, if there is one thing that we are doing, regardless of what the final work product is, it will be that we do not fall into that ancient litany of where we have been before in immigration and refugee policy, which is really no matter how it was beautifully shrouded, it has touches of racism throughout our history of immigration and refugee policy, and that is not going to be part of this caper. You and I both know that.

But because of the tremendous pressures, and I have said this so many times, something is going to be done, and therefore it is our job to see that it is done in a way that does not bring about anything like a result such as that.

EFFECTS OF LEGALIZATION PROGRAM

Just one more question of Mr. Semler, since Mr. Perez fielded you one and Mr. Geffert forwarded you one, so I am going to ask him one. If a legalization program were implemented, do you believe that the individuals who qualified under that, however that would be structured, would remain in their current jobs, or do you think that they would leave, with the result that their employers would then require or be dependent upon some temporary worker program during that transitional period in order to adjust to this reduced availability?

I guess I would assume there that the employer sanctions program would greatly reduce their ability then to use illegal aliens. That is why we would be implementing the employer sanctions program.

What are your thoughts on that?

Mr. **Semler**. These are my thoughts, and I have no special expertise in this but I think that once you give people full legal status here, they will seek out the jobs that suit their needs best, that pay the most and that offer them the best opportunity for advancement.

It is sometimes confusing. I think one of the prior panelists testifed that the illegal aliens in this country now go into agriculture because that is where they can earn the most. Well, if that is true, in his State, for example, in California, then I see no reason why they would leave agriculture once they got their legal status.

So it depends. I think it is a function of wage rates. In most cases if there are low wages now, they would lose those workers unless they raised wages.

Mr. **Torres**. I just wanted to add something for the record on that comment. The contention was made earlier, as Mike indicated, that the wage rates in certain agricultural sectors of certain States are equivalent to those in industry. My experience as a farmworker, seasonal farmworker in California, and as a worker in canneries is that that is not necessarily true.

In fact, as we find in northern California where there is a high concentration of canneries, migrant farmworkers, migrant as well as seasonal, no longer want to work in the agricultural arena, and now they are going into the canneries because they are unionized and they pay a much higher wage. So that is a very good case for the fact that wages have a great deal to do with the way people choose their jobs, obviously. If wages were a little higher, I think it would probably be a lot easier.

I just want to respond too to your question about the legalization. I think some of the proposals indicate that they would like to see those that do not make it the first go-around perhaps work for 2 years. Again, you are only confronted with the situation or presented with a situation in which you have temporary workers for that 2-year period only, and then once that is finished, then your temporary worker pool is dried up. Then what would you do after that?

I think it is a fallacy to depend on the legalization program as a temporary temporary guest worker program. I just don't think that that is a very commonsensible approach to take in dealing with the concerns that some employers may have for lack of available work.

Senator SIMPSON. Thank you very much. I appreciate the testimony of all of you and it has been helpful. Thank you for appearing.

We now have the final panel: Dr. David Gregory, the associate professor at Dartmouth University; and Dr. Craig Frederickson, administrator of the Community Research Associates, Inc., San Diego, Calif.; and Dr. Mark Miller, University of Delaware.

So we might just proceed, if you will, under the time limitations. Dr. Gregory, please, first.

STATEMENT OF DR. DAVID GREGORY, ASSOCIATE PROFESSOR, DARTMOUTH UNIVERSITY

Mr. GREGORY. Senator Simpson, I welcome this opportunity to testify before you, even though the experience is somewhat of a deja vu. For the last 2 years we have been hearing what we cannot and will not and must not do, especially in the area of temporary worker programs, and this always seems to be the place where people like to draw the battleline.

SOLUTION TO THE PROBLEM OF ILLEGAL IMMIGRATION

It is incumbent upon us, however, to begin to try to come up with some solutions. For four administrations now, we have not been able to rectify these problems of illegal immigration, and I certainly hope that this Commission can help the President design a proposal which will finally answer some of the problems we are facing.

There has been a lot of debate on the fact that a temporary worker program is not in the best interest of this country. Well, my contention is that we have a temporary worker program, we have a de facto temporary worker program, unlike the European temporary worker programs, which are a matter of law.

I think that the illegal status of these temporary workers is what has deteriorated certain aspects of our labor market and which continues to be, I think, unacceptable, if not inhumane in many cases. So the fact is not whether we are going to create a temporary worker program or not, but whether we are going to legalize one or continue on with the so-called status quo.

It is also unfortunate that during the past 2 years of the Select Commission's tenure we never began to speak in greater detail with the Europeans themselves upon the successes and failures of their programs. We have ended up with some rather simplistic models of a very complex and diversified situation, which I think at this point we do not have the time to rectify with any more studies. Everyone is fed up with studies and people want something to be done.

This proposal does try to meet the needs of reducing illegal immigration and provide increasing legal opportunities for foreign workers. It also tries to look at the structure of our labor force over the next 15 to 20 years and get a better grip on just what the growth and the composition of that labor force is going to be.

The proposal positively, I think, focuses on our bilateral interest with Mexico and tries to deal with the fact that 50 percent of our undocumented workers and at least 25 percent of our total immigrants are from that particular country. And the temporary nature of this movement is supported by many, many studies, in particular one by Renaldo Baca and Dexter Bryant on citizenship preferences and residency, in which the vast majority interviewed said that they would not want to become American citizens, but they prefer some type of permanent resident alien status.

That is the positive side. There are a lot of negatives that might also be listed. The first is that the figure of 50,000 is quite unrealistic when you consider the magnitude of the problem. In particular, it thinks that we can deal primarily with the supply side rather than the demand side of this immigration, and it is really more than any other factor that I think is responsible for the workers' presence here in the United States.

If there was no demand, we would not be facing the problems that we are now facing. To think that you can come up with an arbitrary number like 50,000 and that it is any kind of test of what the demand in the labor market is I think is unrealistic.

Second, I do not think it is realistic in terms of our present or continued economic recession to go to Mexico to look for 50,000 more workers. If we are going to have some type of temporary worker program, why do we not begin with recruitment right here in the United States amongst those Mexicans who would find such a program attractive. They are here now and they should be given the option for either regularizing their status in terms of the other aspects of the administration's proposal or accept some type of temporary worker status.

For example, one could say that those people who have been here before January 1, 1980, would have the opportunity to either opt for some type of permanent position or a temporary worker status. Those who have been here for at least 6 months prior to the introduction of the temporary worker program would be allowed to participate in this program.

Third, I think that it is a mistake not to allow these people to change the status into a permanent situation after they have been here a number of years. There is always going to be a certain leakage into permanence. In many cases we are the beneficiaries, because this type of migration has some very positive selective features in terms of selecting those individuals, often with greater amounts of initiative than members in their fellow class backgrounds who have stayed behind.

I think this leakage into permanency is important and it should continue.

Senator Simpson. Thank you. Right on the button, very nice.

[The prepared statement of Dr. Gregory follows:]

STATEMENT OF DR. DAVID GREGORY

There is growing public support for the work of this subcommittee to assist this Administration in turning the proposal submitted on July 30th, 1981 by the Attorney General into a workable immigration and refugee policy. There is little doubt that this administration is committed to a major overhauling of the immigration and refugee system. As we see it,the main purpose of the President's proposal is: ". . .to deter illegal immigration and prevent the recurrence of circumstances we are now facing." Most Americans would agree with the Administration that these circumstances are: that we have pursued unrealistic policies that have led us to lose control of our borders, that we have failed to effectively enforce our laws, and that we have lost our ability to determine the parameters of our nation's demographic growth and social structure.

There appears to be considerable misunderstanding among the various interest groups as to what actually constitutes the true facts of the situation beyond the need to abandon what has gradually become, over the past four Administrations, a policy of 'laissez-faire.' The area of some of the most heated debate and misunderstanding, however, centers on what is numerically the least significant but socially the most revolutionary aspect of the overall proposal: to establish a two-year experimental program for the temporary admission of 50,000 workers per year from Mexico for employment in jobs for which there is a shortage of domestic workers.

It is our contention that the illegal status of the undocumented Mexican worker in the U.S. is probably the single greatest cause for the exploitatin faced by the temporary migrant and the deterioration of labor conditions in some areas of the U.S. We have stated elsewhere that a well thought-out temporary workers' program, bilaterally designed with the participation of Mexico is possibly the best alternative to the present situation. A rushed and poorly designed program, however, could be worse than no program at all (Gregory 1981)

Unfortunately , within the present economic climate of repeated recession, and the public's over reaction to the presence of a relatively small number of economic refugees, it is going to be difficult to get any type of temporary worker program accepted. There are both economic and social limits to any country's ability to absorb immigrants. Invariably the social limits seem to be reached long before the economic ones (Gregory 1981:173).

Another major difficulty standing in the way is the largely negative and unfair evaluation--made by many American scholars--of the European experiment in temporary worker programs. Most of these studies have resulted in a simplistic caricature of the European models. It is too bad that over the past two years we missed the opportunity to enter into a more direct dialogue with the Europeans themselves. If we had, a more balanced picture might have emerged.

First, we might have overcome our fear of the population growth south of our borders which has lead us to emphasize the supply side of the equation. This in turn makes us over-emphasize the favors we are doing for Mexico when we act as a "safety-valve" for their over-population and under-employment. A well-designed temporary worker's program, however, is structured by the demand side. In an OECD study of migration , growth and development it was concluded that since the end of World War II the movement of migratory labor in Europe has :". . .been determined almost entirely by the demands of importing countries" (OECD 1978:29). W. R. Böhning of the ILO in comparing guestworker employment in France, Germany and Switzerland also stresses that any type of realistic guest worker policy must operate on the inflow rather than the stock of migrant workers available. He states that this "Demand. . . .is caused economically, screened politically and given effect administratively (1980:19). It is the demand that determines the numbers admitted during a particular period and the change between periods. In the case of Germany, Böhning illustrates that 96 out of 100 annual admissions were due to variations in unfilled vacancies; 96% of the differences in numbers admitted from one year to another could also be accounted for by changes in the annual number of unfilled vacancies (1980:20). In comparing demand in the U.S. with Western Europe he beleives that the similarities in the demand structure of migration in both areas should permit policy learning between the two zones.In particular, he emphasizes the fact that:

> . . .the Mexicans found in the US are not there because of "push " factors in their village and country. There are other Mexicansand, more importantly, many other nationalities who are "pushed" a great deal more and yet they never come near to the US. The Mexicans who are caught by the INS, as well as those who slip through, are there in essence because US employers keep on hiring them, often seeking them out, and because the employers are exempted by law (section 274 (a) of the 1952 Immigration and Nationality Act, the so-called Texas proviso) from penalties for doing so. It is through this hole in the law that US demand takes effect; and it is this demand factor which is the sufficient condition for the illegal inflow of Mexicans and others (1980:22).

Second, many opponents to any type of temporary worker program consider their position justified if they can show any costs at all. Most of the elements in any cost-benefit analysis of migration are particularly difficult to evaluate for both the receiving and sending countries. There are no satisfactory ways to measure the social implications of these movements. The analysis is further complicated by the problem of "time," which can change a benefit into a cost, and with less frequency, a cost into a benefit (Gregory & Cazorla 1980).Finally, the costs and benefits of a temporary workers' program are not always evenly distributed throughout a nation and the various sectors of its population. The Europeans have never implied that their temporary worker programs were not without some serious social imperfections that they have tried to improve over the years. Even though there have been unexpected problems during the 1970's, ". . .the majority of participants in the migratory trade appeared to feel that the economic benefits of the transaction continued to outweigh mounting social costs"(OECD 1979:19). All the countries involved in these various types of temporary worker programs admit that withoutthe importation of these workers the type of continuous economic growth which dramatically raised the standard of living of Western Europe would not have been possible at all (Lamberts 1975; Economic Council 1974). Herman Korte underlines the fact that in the 1960's Western European countries lacked both the capital and the modern technologies that might have even sparingly replaced the need for foreign workers. Körte (1980) and Rosemuller (1970) also emphasize that by filling up the gap in the German labor supply, the foreign workers provided the German worker with the means by which they could transfer into the area of services with little disruption in the production of goods. "In addition, the importation of workers creates a relationship between employees and the total population that first allows the financing of a better provision of social services for the population. Moreover, the employment of foreign workers does not stop the structural change, but only slows it down and thereby eases the adjustment difficulties for the people" (1980:21).

Most opponents would still maintain that eventually the social costs will outweigh any economic benefits as an increasingly unexpected number of temporary migrants seek a more permanent status. Martin, Miller and Papademetriou best express this position declaring that: "Immigrants impose short-term costs but yield long-term benefits. Guestworkers reverse the timing of benefits and costs--the benefits are immediate while costs are both longer-term and more ambiguous" (1981:35). Even if this were partially true, it need not be the outcome if the minority of temporary workers who might like to stay in the receiving country are given the opportunity over an extended period of time to re-adjust their status.

Third,a great deal more has been written about the injustices experienced by the temporary workers than their sucesses.When one considers the millions that have participated in these programs since the 1950's it is amazing how smoothly the system worked in areas like Germany until the cessation of the programs in 1973. In a questionaire administered to Spanish workers in Germany in 1979, they were asked if their temporary move to Germany had been worth the effort. A majority of 78% thought that it had been (Aguirre 1979:80). One of the critical factors contributing to this relative stability is the fact that at least:"In all OECD countries migrants (were) by law, subject to the same work regulations as are native workers; that is, migrants must be paid the same wages for the same hours worked as others" (OECD 1979:29).In the same questionaire the Spanish workers were asked if they felt that they had the same rights as fellow German workers. Slightly over 63% answered affirmatively. When asked, however, if they had the same rights as German citizens the outcome was nearly reversed with only around 36% feeling that they did. It is the ambiguity and resulting inconsistencies between rights as workers vs. rights as citizens that gives rise to most of the problems when they do occur.

Germany has never regarded itself as a country of immigration. Foreigners have never been considered to have a natural or acquired right of admission. In the beginning this point was clearly stated to the governments of all the sending countries and to the incoming workers. With the new emphasis upon family reunions, and the need to better train the second and third generation immigrants to fit into the German work system this position becomes less and less tenable. Now a type of "time limited integration" is being offered to many of the foreign workers; "time limited" because the official view is that they are still going to return home. Germany's Federal Minister of Youth, Family, and Health expressed the position in declaring that: "the natural and cultural identity of the foreign children should be respected, but at the same time their integration into West German society should be made possible. The aim should be 'neither Germanization nor ghettoization'" (Honekopp & Ullman 1980:33).

In general the Administration's plan for an experimental temporary workers' program is a positive step in the direction of attempting to design immigration legislation in terms of the broader question posed by the changing structure of the U.S. labor force during the next 25 years. It is an important attempt to emphasize the need to reduce illegal immigration while simultaneously allowing for an increase in the different types of legal opportunities for employment. It further embodies a number of stringent measures to assure that the US retain some control over balancing the mix of its future social structure.

In particular, a bilateral arrangement with Mexico realistically recognizes the important economic and social ties between our two countries. The emphasis upon Mexican nationals tries to deal with the fact that over 50% of the undocumented workers and nearly 25% of the total immigrants in the U.S. come from Mexico. It also acknowledges the fact that the area along our US-Mexican border could experience a sizeable growth in traditional manufacturing industries over the next quarter century but, as Peter Drucker and others have pointed out, lacks an adequate supply of young Americans in the region to fill traditional jobs. Temporary migration from Mexico, however, could give American manufacturing a new competitive strength (1980:92-93)

The proposal's selection of those workers who have no intention of abandoning their Mexican citizenship is also in keeping with the desires of many of the migrants. A critical study by Renaldo Baca and Dexter Bryant (Citizenship Aspirations and Residency Rights Preferences) clearly demonstrates that their sample of undocumented Mexican workers:". . .desire to retain their native citizenship and prefer a permanent resident alien status to becoming US citizens." These temporary workers make frequent and extended visits to Mexico. The authors suggest that a naturalization program would be inconsistent with the realities of the actual migration process. What is unclear is why they also believe that a temporary work permit would be inconsistent in that it "ignores the reality of returning to family in Mexico. . ." I would argue the very opposite from their own data (Gregory 1981a). From this perspective the Administration's proposal avoids confusing the actual status and intentions of most Mexican workers in the U.S.

Again, this proposal's goal to employ those seeking temporary labor is also in keeping with the fact that around 8 out of 10 undocumented Mexican workers return home within 9 months to a year. While there is disagreement concerning the total numbers involved, the difference between net and gross figures in most of the studies highlights the temporariness of the move for the majority (Garcia 1980, Heer 1979, Newman 1981, Van Arsdol 1979). In an analysis of the figures Allen Newman concludes that even if they are only partially correct:". . . the de facto guestworkers Mexico supplies the US each year exceeds in number the de jure guestworkers from any single Mediterranean country, with the possible exception of Turkey, has ever supplied any Western European country, even at the height of the guestworker programs in the early 1970's (1981:2).

Considering the actual magnitude of this movement, the Administration's proposal appears unrealistic in setting a quota of 50,000 Mexican workers a year over a two year period. In as much as the flows are determined more by the demand for workers rather than the supply (see page 3) this quota can not possibly meet employer's needs; especially when the first year entrants renew their contracts for a second term. Admittedly, the only way to control this program is with some type of employer's sanctions. But if the employers can barely obtain a fraction of the labor they need to fill job vacancies there seems to be little or no reason why they should cooperate in this program. The proper trade-offs just aren't there.

The proposal's intentions to recruit the 50,000 from Mexico during the current period of economic uncertainty also seems inopportune. If a temporary worker program is going to be established it would seem more logical if the first step would be to recruit the workers from Mexican nationals already in the U.S filling jobs that would otherwise be vacant. Those illegal aliens residing in the U.S. prior to January 1, 1980 should be given the opportunity to regularize there status. The same group, along with those who have been working for at least 6 months in the U.S., prior to the activation of this program, should also be given the opportunity to apply for a temporary workers', nonimmigrant visa, with the possiblity of renewal, here in the U.S. If there remain significant job vacancies in regional labor markets in the US, we could then take the second step and seek to recruit workers directly from Mexico.

In any successful temporary worker program there is always going to be a certain number who decide to remain in the host country. Considering the negative trends in the growth rate of populations like Germany, Sweden, France and the US it seems desirable that a percentage of the temporary workers should opt to stay. Furthermore, to make the program attractive to the workers their should be some possiblity for them to gradually change their status over a ten year period. In this sense a temporary workers' program could be used as a positive selection mechanism for future immigrants. Most studies of international migration show that these individuals on the whole are more skilled and enterprising than members from their own class whom they have temporarily left behind. If a small percentage of these temporary workers remain in the US they will also be in a better position to assimilate into US society because of their prior experience in the country. Furthermore, because of our already large population of Mexican-Americans in the southwest, those deciding to remain will find numerous local organizations that can ease their social and cultural adjustment. The less the cultural disparities between groups the smoother the integration process.

In the same vain it seems counter productive to bar the entrance of a spouse and children if the Administration's program is evaluated a success after the two year period. In Germany, workers were allowed to bring their spouse and children under 18 after an initial period of three years. These admittances did not mean, however, that the spouse or children had an immediate right to naturalization. In most instances the husband, wife, and older children worked together as an economic unit, pooled their incomes, and more easily realized their savings targets than lone workers. This meant that they often returned home earlier . Family units certainly caused less social problems in the local communities. The children exposed to local schooling often became excellent ambassadors for the receiving country upon their return home. The costs of schooling seem minimal in comparison to the advantages of having a significant proportion of people in a bordering nation positively dispossed to the country where they had once worked and studied.

The proposal's provisions to block the temporary worker from becoming totally dependent upon welfare seem logical. To block them from any type of unemployment compensation--even though the employers are not exempt from taxing their wages--seems less practical. If a worker looses his job during the contracted period in the US, he should be provided with unemployment benefits for a minumum of twelve weeks while he searches for new employment and is approved under the present proposal's regulations for changing jobs. If after six weeks he remains unemployed he returns to Mexico where, and only where, he can collect his final six weeks of unemployment benefits while seeking new employment in his home society. Such a system would not only be fair to the Mexican worker, but could be used as an inducement for him to return if he is truely without work.

In conclusion one might ask if we really need this new designation at all? Aren't there simpler ways to deal with these issues? Philip Martin, Mark Miller and Demetrios Papadmetriou offer a serious possibility when they recommend that: "One alternative to guestworkers is increased permanent immigration" (1981:24) This suggestion, however, does not respond to the temporary nature of the Mexican flows. They then suggest that most of these workers could be given the status of permanent resident aliens (1981:25). Here the problem is that you can not get the sending country to take any responsibility for their workers if they are classified in the US as permanent resident aliens. In as much as 8 out of 10 Mexicans return within the year to their native land, and explicitly do not want U.S. citizenship, it seems only natural that Mexico should also begin to take some responsibility for its workers while in the U.S. and their return home. Both sending and receiving countries must become involved and share the responsibility for workers who though transient add significantly to the economic expansion of both nations. So far the process has been pretty one sided. A bilaterally designed temporary worker program is the first step to reversing this trend and would compel Mexico to play a more active role.

Finally, it is only through a temporary worker program that we can begin to take advantage of one of the most important social and economic opportunities that has been missed by most of the European system, and still not thoroughly comprehended by Mexico or the U.S.: the training of human capital. Georges Tapinos believes that an expansion of the traditional guest worker programs could be like a Peace Corps volunteers program in reverse. " Just as developed countries provide assistance to the governments of developing countries, the public and private sector of developed countries should assume responsibility to train developing-guest workers in rudimentary agriculture, business, mechanics, or other work and perhaps set aside a monthly cash allowance that will be available only at the scheduled date of departure. Over the long term, the migrant could accumulate skills, capital, and some experience in a developed-country economic environment. Indeed, more can be learned by more people in this way than by sending one or two developed-country technicians overseas" (1978:149).

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Senator SIMPSON. Dr. Frederickson.

STATEMENT OF DR. CRAIG FREDERICKSON, ADMINISTRATOR, COMMUNITY RESEARCH ASSOCIATES, INC., SAN DIEGO, CALIF.

Mr. FREDERICKSON. One of the difficult points in reforming U.S. immigration law concerns the claimed need for migratory foreign labor. The call for foreign labor by some American businesses, particularly in agriculture, challenges the commonplace understanding of high unemployment rates. American workers, it has been asserted, do not want to engage in certain types of work, such as stoop labor farming. And if they could be convinced to take this type of work with high enough wages, the impact on farmers would be so great as to force them to go out of business.

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The present administration's proposal for a guest worker program is strongly influenced by this rationale. At the same time, and let us be frank, there may be other factors which could be used to argue for a guest worker program, such as a concession in bilateral agreements, as a recognition of long-term labor needs, as a way of handling the flow of undocumented migration, or as a way of maintaining the profitability of some businesses.

None of these arguments has the persuasive force of current labor shortages. Because these arguments are rhetorically weak, the principal justification that accompanies each call for a guest worker program is usually the labor shortage one.

Is there, though, a labor shortage in the United States, real or apparent? If there is a labor shortage it should be measurable in specific and, I might add, regional labor markets. The key question is whether foreign labor would help fill existing labor shortages or would these contribute to the displacement of domestic labor and add to the current unemployment rate.

Two, back-to-back studies which we conducted in the County of San Diego in California bear directly on the measurement of job displacement that can be related to the presence of undocumented workers in the regional labor market.

The first study, "Undocumented Immigrants, Their Impact on the County of San Diego" was conducted for the county. It compared the wage expectations of the unemployed American workers to wages received by undocumented workers. The analysis revealed that slightly under 10 percent of the regional unemployment rate could be related directly to the presence of undocumented workers in the San Diego labor market.

In addition, it was found that the removal of these undocumented workers would disrupt agriculture and tourism in San Diego, with 50 to 62 percent of the jobs going unfilled in agriculture and 3 to 9 percent of the jobs going unfilled in tourism.

This analysis, however, assumed that the employer is neutral to the hiring process. The study as then conceived and elaborated could not answer the question, to what extent do local businesses depend on undocumented workers for low-cost labor and in turn profitability. That is, how many firms would be unprofitable if they could not employ undocumented workers?

The second study, "The Employer's View: Implications for a Guest Worker Program," carried the analysis further by conducting interviews with employers in agriculture, restaurants and electronic manufacturing. This study examined differences in the industries" dependence on undocumented workers, global and regional economic factors, and employers' attitudes toward the preferred worker in the bottom rung jobs.

The employers in almost every instance preferred foreign workers to domestic workers, especially to black Americans. The foreign worker exhibited preferred worker attributes in the view of employers, foreign workers generally being undocumented Mexicans in agriculture and restaurants and Asian refugees in electronics assembly work.

The findings of the second study are particularly significant for clarifying the economic reality upon which a guest worker program could be constructed. Despite growing literature on undocumented workers, policymakers have little way of systematically examining business impacts upon industries which have differing degrees of dependence on an undocumented worker.

"The Employers View" provides a straightforward response to, should there be a guest worker program. Each of the employers in each of the industries gave support to a guest or legalized foreign worker program. However, a systematic and comparative analysis of their business situation revealed that employers could generally afford to attract American workers and substitute them into jobs for undocumented workers. Thus on the basis of need alone a guest worker program could not be justified for San Diego County, except in a very limited way for agriculture, and there were four very stiff conditions that were imposed which because of limitations of time I cannot read.

I think by way of conclusion, this discussion does not call into question the ability and rationale of policymakers to follow the course of establishing a guest worker program. Rather, it points to implications of such a rationale. Given that employers help to create American worker displacement by wanting, in this context, a new foreign worker force, and given that a foreign worker program will legitimize this displacement, how would policymakers justify their hand in institutionalizing this displacement? And what remedial action would they plan to take to rectify it? In short, what would legislators do with the discarded American workers?

Senator SIMPSON. Thank you very much. That is rather unique.

[The prepared statement of Dr. Frederickson follows:]

STATEMENT OF DR. CRAIG FREDERICKSON

One of the difficult points in reforming U.S. immigration law concerns the claimed need for migratory, foreign labor. The call for foreign labor by some American businesses, particularly in agriculture, challenges the commonplace understanding of high unemployment rates: American workers, it has been asserted, do not want to engage in certain types of work, such as "stoop labor" farming, and if they could be convinced to take this type of work with high enough wages, the impact on farmers would be so onerous as to force them to go out of business. The present Administration's proposal for a guest-worker program is strongly influenced by this rationale.

At the same time, there may be other factors which could be used to argue for a guest-worker program: as a concession in bilateral agreements, as a recognition of long-term labor needs, as a way of handling the flow of undocumented migration, or as a way of maintaining the profitability of some businesses. None of these arguments has the persuasive force of "current labor shortages;" because these arguments are rhetorically weak, the principal justification that accompanies the call for a guest-worker program is the labor-shortage one.

Is there, though, a labor shortage in the United States--real or apparent? If there is a labor shortage, it should be measurable in specific, regional, labor markets. The key question is whether foreign labor would help fill existing labor shortages, or would these contribute to the displacement of domestic labor and add to the current unemployment rate?

Two back-to-back studies, conducted by Community Research Associates, Inc., provide a unique glimpse of this issue in San Diego, California. In the first study, the wage expectations of unemployed American workers were compared to the wages received by undocumented workers, revealing that slightly under 10% of the regional unemployment rate was attributable to the presence of undocumented workers in the San Diego labor market. The removal of these workers would disrupt the agriculture and tourist industries in San Diego with 50% to 62% of the jobs going unfilled in agriculture and 3% to 9% of the jobs going unfilled in tourism.

This analysis, however, assumes that the employer is neutral to the hiring process. The study, as then conceived and elaborated, could not answer the question, "To what extent do local businesses depend on undocumented workers for low-cost labor and, in turn, profitability? That is, how many firms would be unprofitable if they could not employ undocumented workers?"

The second study carried the analysis a step further by examining the employer's role in the labor market. The study found that most employers could, in fact, afford to hire American workers and not go out of business as a result of hiring domestic labor. Employers, in many instances, preferred foreign workers to domestic workers, especially to Black Americans. The "foreign worker" exhibited preferred worker attributes in the view of the employers--foreign workers generally being undocumented Mexicans in agriculture and restaurants, and Asian refugees in electronics assembly work. These workers were viewed as being more productive and more reliable. They represented lower labor costs and were seen as being less likely to organize or speak up for themselves.

The comparative study of agriculture, restaurant, and electronics manufacturing employers shows that the claimed "need" for foreign labor results in the bypassing of available domestic labor, thereby contributing to the unemployment rate. Thus, the "need" for a guest-worker program cannot be justified from an objective analysis of the employer's view. (Admittedly, the issue is more difficult to judge in agriculture. "Some" need for guest workers may be called for in agriculture, but only after four important conditions are met. These conditions are described below.

Methodology

Employers in three industries were selected, based on their different degrees of dependence on undocumented workers: agriculture was most dependent, restaurants were moderately dependent, and electronics manufacturing was minimally dependent on undocumented workers in San Diego County. This comparative framework provides a way of testing the relationship between an employer's dependence on or use of undocumented workers and specific attitudes, such as whether the undocumented or American laborer "works harder," whether American workers can be substituted into jobs held by undocumented workers, whether there should be employer sanctions, and so forth. Furthermore, this framework permits a uniform comparison of agricultural and non-agricultural enterprises.

The jobs that were the focus of discussion were bottom-rung job categories in each industry: picker or general laborer in agriculture, dishwasher or kitchen crew in restaurants, assembler in electronics manufacturing. These were the jobs most likely to be held by undocumented workers.

The study integrated a wide variety of data sets: published and unpublished, time series data; national and regional comparisons of each industry; court testimony and interviews with employers, trade association and union representatives, government analysts, and workers. The study also included a brief examination of Tijuana, the oft-stated complement to San Diego's regional economy, and how employers in Tijuana perceived the merits of a U.S. guest-worker program and the likely impacts it would have on their businesses.

The analytic framework broadened a narrow economic perspective to include attitudinal data. Profile of employers--emphasizing their personal views on their industry, their preferred workers, and the need for a guest-worker program--formed the centerpiece of the analysis: eight farmers, seven electronics manufacturers, and three restaurant employers are profiled in the study. These profiles were generally based on a series of interviews, structured and unstructured, together with observational data where possible.

Given the scant survey research available on employers of undocumented workers, an exploratory survey was developed. The number of employers interviewed (including most of those profiled) totaled thirty-seven: fourteen farmers, twelve electronics manufacturers, and eleven restaurant employers. Because of the sample size and possible sampling errors, the results of this survey should be considered to be suggestive rather than compelling. It should be noted, though, that the survey results are consistent with the other collected data.

Findings

The findings will be divided into two sections. The first section will emphasize data drawn from the open-ended interviews with employers. The significance of these data is that they draw out the employer's view of the labor force in the context of the work place. As such, the study provides policy-makers with an objective and systematic framework for evaluating employer views. These are the views to which policy-makers should be privy but are not, because of the advocacy context in which employers and their representatives plead their case. The second section will present the quantitative data drawn from the structured interviews.

In Agriculture ...

A historical, ten-year analysis of tomato plantings shows how north, San Diego County surpassed south, San Diego County and became the dominant tomato producing area in the county. Farmers point to the higher costs that unionization brought upon south county agriculture as the reason for this change. However, union activity did not begin until after 1975, with the first contracts being signed in 1977. The critical change began earlier in 1972-3. Here, labor costs were also a factor. North county farmers were able to replace their domestic workers with undocumented workers, thereby lowering their labor costs in relation to south count farmers, who, because they were under the watchful eye of the Border Patrol, could not follow the same pattern of undocumented-worker substitution as north county farmers. If a guest-worker program were instituted in San Diego, and north county's illegal workers were suddenly transformed into legal workers with the salary level kept at the present minimum wage, the program would end up favoring north county farmers over south county farmers, who must pay the higher rate to their unionized workers. (Another option, of course, is to effectively lower the wage rate of south county farm workers by having guest workers there also--although, ostensibly, that is not the intent of a guest-worker program, namely, depressing the wages of legal workers.)

To farmers, the undocumented worker represents, by and large, the ideal general laborer. However, farmers recognize that the undocumented workers can quickly lose the very characteristics which make them preferred workers. One north county grower alludes to how the undocumented workers' illegal status serves to maintain them within the image of the ideal worker:

> There is an invisible fence about five miles from here [the Orange County line]. Once our man crosses that fence and decides to venture into the whole different world of Anaheim, Santa Ana and L.A., and he lives there, say six months, when he comes back he would be a total misfit! The term is: he has had to adopt the "gringo way." He's also been exposed to things he has never heard of: fringe benefits, unionism, etc. These things occur almost magically, and you know there is a little reluctance to get legality to our man down here.

South county farmers, unlike north county farmers, have seen or experienced the successful unionization process with undocumented workers playing an active role and, as a result, are less likely to view undocumented persons as being uniformly docile workers. One south county farmer provides considerable insight into the feelings that farmers do not express in advocacy forums. After paying lip service to legitimizing undocumented workers, he shows a marked change in attitude in subsequent discussions as his own labor problems develop:

> There is a danger of too much flow of people coming in. They have to scramble for survival in Mexico, and crookedness there is a way of life. With that same philosophy of life, if you make them legal that problem would probably intensify. In that sense, it would be better to keep them a little afraid and more polite. Even now, they know how far they can push it.

Nearly 100% of general farm labor in San Diego County is of Mexican origin, with a majority of these workers being undocumented (more so in north county than in south county). Any discussion of substituting "Americans" into farm work typically done by undocumented workers must recognize that legal, domestic, farm workers in this region have typically been U.S. legal-residents or U.S. citizens of Mexican-origin. (Ignoring this demographic fact makes suggestions of bringing unemployed workers off the street of Detroit to work on the farms in San Diego naive at best.)

The determination of the farmers' "need" for guest workers is difficult to establish because of the stated limitation of the labor force to workers of Hispanic (and primarily, Mexican) origin and the employer/domestic-worker contest for reasonable wages. "Some" need for guest workers may exist after the following four conditions are met:

1. That farmers pay a wage which does not depress the wages of legally available workers (generally above wages paid to undocumented workers and at a level near or equal to the union wage paid by south, San Diego County farmers); *

2. That farmers hire available domestic labor from this region (which includes farm workers from San Diego and Imperial Counties as well as "green-card, commuter workers" from Tijuana and Mexicali);

3. That it be determined that growers are not over-hiring, resulting in workers being hired for less than the normal work day, thereby inflating the "need" for workers; and,

4. That farmers have not and are not firing legal workers in order to hire illegal workers and to justify their "need" for guest workers.

In Restaurants ...

Undocumented workers in restaurants are generally limited to kitchen work, particularly dishwasher and prep cook with mobility up to cook. Undocumented workers fall into these job categories because of their particular characteristics: low visibility, no need for English language proficiency, and low-skilled at the entry-level positions. It can be argued that undocumented persons in these jobs are occupying a special niche that is ideally suited to the needs of both the employer and the undocumented employee. That niche was referred to by one owner as "behind the wall." Undocumented employees will sometimes decline job promotions to busboy and runner because the potential public contact calls for speaking English. One undocumented restaurant worker succintly describes this limitation: "In the restaurant business, the easiest job for a non-English speaker is washing dishes; after all, one isn't speaking to them, the plates."

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* If current practices are followed, the wage offered would be comparable to the Department of Labor's adverse-effect wage rate. This wage rate is intended to avoid depressing the wages of legally available workers. Using the logic of the adverse-effect wage rate, the rate at which local wages would be depressed is found on south, not north county farms--the latter having a near 100% use of undocumented workers as general farm laborers.

Restaurant employers, unlike farmers, have not been subject to Border Patrol raids nearly as much (or, in their situation, the "sweeps" of the INS Investigations Unit). Thus, restaurant employers can choose not to know the legal status of their workers; they can refer to social security numbers on job applications and not press the issue further. One former manager of a plush restaurant in La Jolla spoke about the issue of knowing his worker's legal status:

> The restaurant business is kind of funny. In some ways, the management doesn't like to talk about something that might be illegal, especially to [just] anybody, freely and openly [and] especially when it comes to hiring undocumented workers. That's why I believe most managers don't check social security numbers, because they don't want to know if the guy's illegal or not.

Farmers, however, often see their workers carried off by the Border Patrol, so they can tell which of their workers are undocumented.

Restaurant employers point to a higher level of work intensity of Mexican (read: suspected undocumented) dishwashers than what they believe the American counterpart would show. Moreover, the turnover is lower: "With the Mexican worker, (dishwashing) is career-oriented, and you've got a guy for life." Restaurant owners in San Diego recognize and often develop a "Mexican connection," which supplies them with new workers. Some owners rely on labor contractors, while others turn to relatives in their present workers' family network.

An example of the family network is given by one employer:

> We have a Huerta family that has eight Huertas working for us. They are our prep force--father, mother, brothers, sisters, cousins--the whole work force is the Huerta family. In fact, we just had a dispute with them the other day, where we're having problems because they're taking over the prep area. We have a hard time telling them what to do... They're a proud people and... the fact is, there's a hot sauce and it's homemade [at the restaurant]. If the Huertas walk out, they take the recipe.

Another employer compared two restaurants in the company chain of restaurants. In St. Louis, the restaurant had only Black Americans in their bus and dishwasher crews. He related that the restaurant is constantly having labor problems. "These guys always want more money and are constantly bellyaching about the job. They just feel it's beneath them--unworthy of them." By contrast, his own restaurant in San Diego has only Mexican workers in these job categories. He describes the greater flexibility he has in maintaining the type of worker he prefers:

> I have a fellow. His name is Alberto. He takes care of all that for me. He's in the Mexican mafia... To get the [dishwasher] job, it costs the guy, say, $200. Alberto brings them across [from Mexico] and gets them a job... So he owns the house they live in... They have to pay for transportation. When I say "Alberto, I'm firing this guy. I want another guy tomorrow--I want a good guy," he'll bring me a guy and say, "This is Roberto. He's starting today."

This same employer was quite specific about what he believed would happen if undocumented workers were removed from the regional labor force and he had to turn American workers:

> If young Anglos or Blacks have to be hired for the job, the turnover in staff will be much greater. The Anglos or Blacks will get bored quicker. They feel this job is beneath their dignity. I'd have a much more difficult time finding dishwashers. I don't think the Americans will accept the job that well. It's really tough! I'd have to hire five Anglos for every Mexican I hired!

The survey of employers suggests that this view is broadly held. Nearly all the employers surveyed wanted a guest-worker program for restaurants. Nearly 80% of the employers stated as their primary reason for favoring such a program that either foreign workers were better than U.S. workers (44%) or that they represented a lower labor cost (33%). Only 22% felt that there were not enough U.S. workers available for these jobs.

The research did not explore the American worker's view in relation to the employer's preference for foreign workers for kitchen work. However, one telling letter, appearing in a local newspaper, forces recognition of a more complex situation than employers articulate:

> My son was fired to make room for an illegal alien. He worked as a busboy in a restaurant... My boy was dismissed so the job could be given to the nephew of the head waiter. I phoned the owner of the restaurant. He said there was nothing anybody could do. He warned me that my son might be beaten or even stabbed if he got in the way of the Mexican group which controls the jobs at his place of business.

The employer profiles show that the niche occupied by Hispanic (frequently Mexican) undocumented workers in the kitchen area has often evolved through the extending of family networks or informal brokers who profit by finding the "right" employee. Whether the employer relies on labor contractors or recruits through family members already at work in the restaurant, the job niche (behind the wall) would be guarded by both the employers and undocumented employees against outside encroachment--in many cases, from American teenagers.

In Electronics ...

Electronics manufacturing was chosen as a "negative case," one in which there were few undocumented workers. The response of employers show, as suggested by the research framework, that their lack of dependence on undocumented workers corresponds to their lack of valuing and preferring undocumented workers over American workers. The undocumented worker is not described as uniformly as having the necessary work skills, and there is some question about the substitutability of undocumented workers in the bottom-rung positions held by American workers.

Not unexpectedly, one employer found it difficult to comprehend what the removal of undocumented workers would mean to electronics manufacturing:

> The question is illogical. If all the undocumented workers left electronics, the wages would not go up. I had a friend--I don't know if you want to take this down--up in the Bay Area, and he hired a lot of Hispanics, no undocumented. He didn't pay anyone over the minimum wage except the supervisors, and he had no problems getting workers in what's supposed to be a labor shortage area. He also had high worker morale, so there are plenty of American workers who would work at the minimum wage in electronics.

It is worth noting, however, that a major segment of the electronics assembly work in San Diego is done by Asians, many of whom are recently-arrived refugees from Southeast Asia. Interestingly enough, it is these workers who are the most preferred by employers. Figuratively, employers in the electronics industry already have a "guest-worker" program in force. Electronics manufacturing employers' preference for Asian workers is on a par with the farmers' and restaurant employers' preference for undocumented Mexican workers. In both instances, the employer has avoided turning to available segments of the American work force.

The assembly end of electronics manufacturing faces competition from offshore locations, such as Taiwan, Malaysia, and right across the border from San Diego--Tijuana, Mexico. Under an unrestricted, guest-worker program, the Mexican assembly worker could directly compete with the San Diego work force. The workers in Tijuana have far lower wage expectations than do their San Diego counterparts, as well as being recognized as dedicated workers (much like the Asian worker in San Diego). The availability of Mexican nationals from Tijuana under a guest-worker program would represent added competition to the San Diego work force. One employer voiced an opinion about "open borders" in the search for a truly free market place:

> I'm in favor of an open border for selecting one's place of employment, and together with the open border, we should eliminate the minimum wage. We'd be a lot better off by removing the artificial line on the paper, and the worker would get what he's worth on the open market... American workers should be paid world-wide rates. We shouldn't be protecting our low-skilled people here from low rates that are being paid down in Mexico. Some will be hurt by removing these protections, but others, I think, will realize when they are exposed to the harshness of things that they will have to work, and they will benefit from that.
>
> It's the same with tariff protections. We should let Japan send in all the cars they want, and they should let us send in all the beef we want. There should be no tariffs.

Although electronics manufacturing served as a "negative case" with respect to dependency on undocumented workers, it reinforced an important issue in relation to a guest-worker program, namely, whether "guest workers" would be used as an alternative to the existing, American work force.

A Cross-Industry Analysis

The preceding analysis of each industry can be usefully re-examined from a comparative, cross-industry perspective. An exploratory survey was developed and administered to thirty-seven employers. Highlights of the results reveal cross-industry differences conforming to each industry's dependence on undocumented workers.

The survey focused in on job "X"--the bottom-rung, job category in each industry. Employers were asked, "What would happen if wages for job "X" went up by 25%?" "...by 50%?" and "At what wage would going out of business become a real possibility?" These questions sought to determine perceived business impacts and compare these impacts across the targeted industries. (A major part of the analysis is carried out in terms of whether job "X" represents a "restricted" or "extended" part of operational expenses. In a fine analysis, truck farms are more comparable to electronics assembly plants than they are to orchards or restaurants because of the dramatic difference in the percentage of labor costs represented by workers in job "X.")

The going-out-of-business wage level was compared to the wage expectations of unemployed workers (developed in the first study, Undocumented Immigrants: Their Impact on the County of San Diego). A first look at this comparison shows that employers in restaurants and electronics can afford to attract unemployed workers in San Diego County without having to reach the outcome of going out of business. In agriculture, however, the unemployed workers' wage expectations are apparently beyond the financial capability of farmers, more so among truck farmers. However, the results for farming require further analysis. These results should be considered to be good approximations of the local, labor force's wage expectations and an example of how one segment of the labor force can price itself out of the marketplace.

However, the comparison falters once it is realized that general farm laborers are nearly 100% Mexican, but that fewer than 25% of the unemployed workers interviewed were Mexican (and not all being farm workers). A more reasonable comparison for farm work would be to consider wages currently being paid to legally available workers, these being the wages near or at the level paid to union workers in south county ($4.05/hour as the union rate; $3.40/hour plus profit sharing to $3.75/hour for non-union rates). The issue for determining the

Industry	Wage Expectations Of Unemployed Workers*	Going-Out-Of-Business Wage	Falls Within Range
Agriculture General Labor	$4.93	$4.26 - $4.83	No
Restaurants Dishwasher	$4.08	$4.66	Yes
Electronics Assembler	$4.58 - $5.24	$5 - Never	Generally

Figure 1. Comparison of Wage Expectations of Unemployed Workers and Employers' Going-Out-Of Business Wages.

* Note: The wage expectations of unemployed workers were developed from survey data collected for Undocumented Immigrants: Their Impact on the County of San Diego (May 1980). The minimum wage rate increased during the survey and once again since that time. A single adjustment has been made, following the previous study, to January, 1980. However, an additional amount could be added (20c) to bring the minimum wage level back to that during the earlier part of the survey of unemployed workers. The adjustment would be minor and would not affect the argument made here.

"need" for guest workers becomes, then, whether farmers make a good-faith effort to hire legally available workers or whether they will seek any means possible to avoid this segment of the labor force to forestall unionization.

Thus, employers in each of the industries surveyed can afford to attract domestic workers. The extent to which there is an actual shortage of workers in agriculture can only be determined after the above-stated conditions are met (see page 4).

The attitudes employers have towards American workers closely parallel their degree of dependence on undocumented workers. The responses to the following questions show farmers generally at the polar extreme from electronics manufacturers with restaurant employers falling in between. (See Figure 2. Percentages represent responses within each industry.)

Farmers, who are in an industry which is highly dependent on undocumented workers, generally agree that undocumented workers represent lower labor costs, work harder than U.S. workers, would increase productivity, are not less reliable than U.S. workers, and farmers question whether U.S. workers could be substituted into the jobs undocumented workers now hold. Farmers strongly disagree with the idea of employer sanctions.

Employers in electronics manufacturing, where the use of undocumented workers is low, have opinions which are diametrically opposed to those of farmers. Restaurant employers generally fall in between these two extremes, paralleling the moderate use of undocumented workers in their industry.

Question	Percent Agree/Yes Responses		
	Agriculture	Restaurants	Electronics
1. The firm would have lower labor costs because U.S. citizens would not accept the work for the prevailing wage.	86%	45%	25%
2. Undocumented workers work harder than U.S. citizens.	86%	56%	11%
3. Would hiring undocumented workers increase productivity of businesses in your industry?	86%	27%	8%
4. Undocumented workers are less reliable than U.S. citizens?	36%	11%	56%
5. To what extent can U.S. workers be substituted for undocumented workers?			
Completely	31%	57%	100%
Somewhat	31%	43%	--
Hardly at all	38%	--	--
6. Do you feel that there should be employer sanctions or fines on U.S. employers who hire undocumented workers?	25%	45%	78%

Figure 2. Comparison of Agriculture, Restaurant, and Electronics Manufacturing Employers on Items Related to Undocumented Workers.

Having brought the employer into the process of what is needed to determine unemployment rates, it is clear that some employers are actively engaged in seeking out certain workers--in fact, preferred workers. By offering employment to some workers, others are displaced. The conclusion of the first study must be amended: the displacement of legally-available domestic workers is higher than that estimated in the first study. What is not clear, and what was beyond the scope of this study, is exactly how much more local unemployment there is as the result of the employer's preference for undocumented workers.

A Guest-Worker Program?

Should there be a guest-worker program? To be sure, there are various reasons that can be used to justify such a program. The response, based on the data used in this study, is focused only on the justification of short-term labor needs.

While employers in each of the industries studied give their overall support to a guest- or legalized, foreign-worker program, a systematic and comparative analysis of their business situation reveals that the employers could generally afford to attract American workers and substitute them into jobs held by undocumented workers. Thus, on the basis of "need" alone, a guest-worker program could not be justified for San Diego County (with the possible, minor exception for agriculture as stated above).

STATEMENT OF DR. MARK MILLER, PROFESSOR, UNIVERSITY OF DELAWARE

Senator **Simpson**. Dr. Miller, please.

Mr. **Miller**. Mr. Chairman, careful examination of past U.S. experiments with temporary foreign worker policy and of comparable policies in Western Europe reveals an uncanny history of foreign worker policy resulting in problems more so than serving the public interest. Although an expanded U.S. temporary foreign worker policy would not necessarily result in untoward consequences, such as witnessed, first, during the bracero period; second, on the U.S. Virgin Islands, and third, in Western Europe, past experience certainly sounds a tocsin with regard to the advisability of expanding temporary foreign worker policy in the first place.

TEMPORARY FOREIGN WORKER POLICY

Unlike the United States, which traditionally bars nonimmigrant laborers, Western European countries admitted millions of foreign workers in the post-World War II period. Most of these workers were admitted into jobs of a permanent nature, but with temporary work and residency permits. Most European countries do not welcome immigration, but they have become de facto immigration countries as a result of their decisions to admit supposedly temporary foreign workers. Most foreign workers admitted to Europe did return home as planned, but a large fraction stayed on. In part because of this unexpected migrant proclivity to stay on, but also due to deteriorating economic conditions and sociopolitical tensions, one European country after the other stopped recruitment in the 1973–75 period. Currently there is no thought of restarting recruitment.

A major lesson to be learned from the European experience is the danger of basing foreign worker policy on the assumption that migrants want to return home. In the European case, return was a myth for a sizable fraction of migrants. Second, the European experience would caution against admitting aliens for permanent-type work on a temporary basis. The French and Swiss seasonal worker programs involved temporary admissions for temporary work, and seasonal workers were required to return home each year. The seasonal work force lives at the margin of European society, but relatively few seasonal workers leak into permanence.

The choice, then, is between a U.S. program that admits foreign workers on a short-term basis, attempts to treat the workers humanely but has no pretensions of integrating these workers, and a European-style attempt to shuttle large numbers of alien workers through jobs of a permanent nature. If forced to choose between the two options, I would favor the former over the latter. However, I am decidedly pessimistic as to the wisdom of any expanded temporary foreign worker policy.

Thank you.

Senator **Simpson**. Thank you very much.

[The prepared statement of Dr. Miller follows:]

STATEMENT OF DR. MARK MILLER

Adoption of an expanded U.S. temporary foreign worker policy has been advocated as a way to (1) significantly reduce abridgement of U.S. immigration law due to illegal entry, (2) ameliorate the social-legal status of aliens now entering outside the ambit of U.S. immigration law, (3) improve relations with countries such as Mexico whose citizens now enter the United States illegally in large numbers, (4) respond to perceived short-term and long-term manpower shortages which would threaten U.S. business enterprises, especially those dependent on relatively low-skilled, manual labor, and (5) relieve potentially destabilizing unemployment problems in labor-sending countries while concomitantly spurring economic development in these countries through receipt of remittances. Currently, the U.S. admits only some 30,000 temporary foreign workers under the Hii provision of the Immigration and Naturalization Act, as amended.

Since passage of the 1885 law barring contract labor, the U.S. has largely banned nonimmigrant labor employment. Hence, expansion of the U.S. nonimmigrant workforce, such as envisaged in President Reagan's immigration policy proposals of July 30, would represent a departure from the traditional U.S. preference for classical immigration. By definition, aliens admitted to work under a temporary foreign worker program are expected to return home after relatively brief sojourns and are not expected to become permanent residents or citizens.

Unlike the United States, Western European countries admitted millions of foreign workers in the post-World War II period. With some exceptions, such as in the case of France, foreign worker admissions were neither expected nor intended to eventuate in permanent residency. In light of current contemplation of the merits of expanded U.S. temporary foreign worker policy, then, the European experience with foreign labor policy takes on significance as a reference point because traditional divergences between the U.S. and Europe in the migration policy area would be attenuated.

An Overview of the European Experience

European foreign worker policies developed primarily as a response to manpower shortages in manual labor occupations. These shortages were expected to be ephemeral but proved to be long-term. Large-scale foreign labor admissions were permitted first in Switzerland where a bilateral labor treaty was signed with Italy in 1948. Elsewhere in Europe, large-scale foreign labor policy generally began in the early 1960s. Signature of the Treaty of Rome in 1957, which created the European Economic Community (Common Market), provided for implementation of freedom of labor movement between member states over a ten year period. Hence, the majority of early foreign workers in the Federal Republic of Germany were from Italy which also is a member of the EEC. Italians, and other EEC workers, have privileged status when they take up employment in another EEC country. They now are free to enter to look for work and (with a few restrictions) are automatically entitled to five year, renewable work and residency authorization.

Rapid economic growth in the 1960s, however, soon created labor demand that rapidly depleted the EEC's labor reservoir in southern Italy. Consequently, countries like Germany and France signed a series of bilateral treaties in the 1960s to authorize foreign worker admissions from increasingly distant, both physically and culturally, countries primarily in the Mediterranean Basin. While EEC nationals represented almost half of the foreign workers employed in the Common Market in 1959, by 1973 only one quarter of all foreign workers in the expanded EEC were from other EEC members.

Foreign workers recruited under bilateral treaties generally were given work and residency permits valid for one year. They then generally became eligible for two or three year permits. Due, in part, to Organization for Economic Cooperation and Development (OECD) article 8 and ILO Convention 97, most foreign workers in such major host countries as France, Germany, and Switzerland had their labor market status assimilated to that of nationals after five years of continuous work and residency. In other words, permit renewal could be denied them only in exceptional circumstances. Although European governments could have denied permit renewal to short-term migrants, they largely did not exercise this option until the 1973-1975 period when one European country after the other halted labor recruitment (not applicable to EEC workers and seasonal workers in France and in Switzerland). Instead, permits were routinely renewed. In Germany, efforts by conservatives to deny permit renewal to nonprivileged foreign workers were rejected by the Social Democratic government as contrary to equitable policy.

Foreign worker policy in countries like Germany and Switzerland was not supposed to eventuate in long term residency but it did for a substantial fraction of migrants. Most migrants did return home as planned but many more than anticipated stayed on and became de facto permanent residents. Return rates varied significantly between nationality groups (90% versus 30% in the cases of Italians and Turks respectively in Germany). The tendency for foreign workers to stay on for longer periods than expected was perceptible prior to 1973 and seems to have contributed to decisions to halt recruitment. European governments had expected foreign workers to return home of their own accord and they had not anticipated the duration and amplitude of post-war economic expansion when decisions to admit foreign workers were taken. It was assumed that economic factors combined with the presumed desire of most migrants to return home would secure migrant return. With the possible exception of the 1967 recession in Germany, only seasonal workers in France and in Switzerland were systematically required to return home after stays of less than one year.

Growing recognition of the "myth of return" (the mistaken belief that migrants would voluntarily return home), then, contributed to European decisions to stop recruitment. The tendency for migrants to stay on was clear prior to the recruitment bans and did not arise solely from those decisions as sometimes alleged. A contributing factor in decisions to halt recruitment should not be confused as a consequence of those decisions, although it is true that the tendency for longer stays becomes more pronounced in the 1970s.

Recruitment bans also were motivated by deteriorating economic conditions and the largely unanticipated phenomenon of dependents coming to join foreign workers in Western Europe. Largely as a result of ILO, OECD and Council of Europe instruments, but also due to bilateral negotiations, most foreign workers in Western Europe are allowed to bring in their immediate family after approximately a one year wait. Only seasonal workers in Switzerland and non-Spanish seasonal workers in France are not permitted to bring in their families (except as visitors) among Europe's diverse foreign worker groups. Together, there are about 250,000 seasonal workers in Switzerland and in

France as compared to an overall alien population of about fourteen million throughout Western Europe of whom six million are legally employed.

The arrival of large numbers of dependents heightened the realization that an assumed temporary workforce had become a long-term, and probably permanent, part of European society. Sociopolitical tensions resulting from large-scale foreign worker employment also had emerged by the 1970s and contributed to decisions to halt recruitment. Politicization of foreign worker policy first occurred in Switzerland where an anti-foreigner movement was active by 1964. A significant degree of politicization of foreign worker issues did not occur elsewhere until the early 1970s but this should not obscure the fact that important problems stemming from foreign worker policies were festering throughout the 1960s before exploding as major European political issues by the 1970s.

Some American observers attribute politicization of foreign worker issues solely to the onset of economic recession and assess the pre-1973 policy period in Europe as relatively problem free. Such an assessment obscures the manifold major problems of European foreign worker policies that were apparent but largely not politicized prior to 1973 such as inadequate foreign worker housing, their restricted rights, discrimination against foreign workers and foreign worker concentration in certain types of blue collar jobs which subsequently were abandoned by native workers. If anything, the condition of foreign workers has improved and integration policies have attenuated the potential for sociopolitical conflict in the post-recruitment halt stage. Nonetheless, the legacy of twenty years of foreign worker recruitment in Europe is significant minority problems which now seem to outweigh the considerable economic benefits of postwar foreign worker policies in Western Europe. Without foreign workers, Europe's remarkable postwar economic growth would not have been possible. But memories of foreign worker contributions are fading in the face of integration issues. Integration of foreign workers is now seen as one of the major domestic and foreign policy issues facing Europe in the 1980s.

Despite the recruitment halts, populations of foreign workers and their dependents have remained steady or have grown. Although two million aliens lost their jobs and may have returned home in the post-1973 period, foreign populations are constantly replenished by the arrival of dependents from labor-sending countries and the birth of foreign worker children in Europe. Approximately 13 percent of all births in Germany, for example, are the children of aliens. The foreign population of Germany grew by 300,000 (roughly 7%) in 1980 regardless of the recruitment halt. Germany, though, still does not regard itself as a classical immigration country and has stringent naturalization laws. European countries now are torn between the dilemma posed by the desire to integrate foreign populations so as to forestall the development of a permanent alien underclass and their continuing desire to see foreign workers return home. The result has been adoption of policies which frequently contradict one another and accomplish a satisfactory degree neither of integration nor return.

Implications for the United States

The European experience with foreign worker policy clearly sounds a tocsin for the United States. The United States, of course, would not necessarily replicate the European experience with foreign labor if temporary foreign worker policy was to be expanded, but clearly foreign worker policy contains many potential pitfalls which may advise against adoption of such a policy in the first place. First, though, several comparative caveats are in order.

Foreign worker policies in Western Europe were large-scale. Foreigners came to comprise between 5 and 15 percent of total populations and between 10 and 30 percent of the workforces in France, Germany and Switzerland. The temporary foreign worker program currently envisaged by the Administration would be miniscule by comparison. Although the legalization or amnesty program envisaged can, in a sense, be seen as a "backdoor" guestworker program. In France prior to 1973, many aliens entered illegally but then had their status legalized. Such legalized foreign workers in France are lumped in with legally admitted foreign workers for policy considerations. Perhaps the temporary foreign worker program and the legalization program should not be considered apart from one another in the U.S. context as well. A major general difference to be kept in mind when comparing Western Europe and the United States in this policy area is that Western European governments inaugurated foreign worker policies without large resident illegal alien populations as in the United States. Today, however, European countries do have significant illegal alien populations generally estimated to number about 10 percent of legally resident alien populations.

Another important difference is that European governments are at a relative advantage in regulating alien inflows as compared to the United States. Although regulation of alien residency and transit poses huge problems in Western Europe, European societies are somewhat better equipped to monitor foreign workers than is the United States. Most Western European countries have some form of a national identity card. The police have freer rein to stop and check individuals than in the more civil liberties-conscious U.S. And, European populations generally are more ethnically homogeneous than is the United States. Turks in Germany stand out in a way that Mexican workers in many parts of the United States would not. Bearing in mind these contextual differences, what then are the specific lessons to be drawn from the European foreign worker experience for purposes of the U.S. debate?

One problem inherent in foreign worker policy in any democratic society is the issue of its adverse effects upon the wages and working conditions of indigenous labor. In Europe, most foreign workers were admitted on the stipulation that they be paid prevailing wages and that their employment not undercut working conditions. European societies did have adverse effect safeguards although certification procedures were largely informal. In the French case, a 1930s law safeguarding indigenous labor was not apparently applied during the period of massive foreign worker recruitment. In countries with highly developed industrial democracy and collective bargaining institutions, such as in Germany, employers had to get the agreement of employee representatives prior to hiring foreign labor.

Assessment of the efficacy of adverse effect provisions in the European context is hazardous, but the following observations can be made. Displacement of native workers by alien workers was largely a retroactive issue in Europe. Because of the rapid pace of economic expansion, there were many more jobs than native workers. The vast majority of foreign workers were funnelled into manual labor jobs, both skilled and unskilled, where workers were in chronic short supply. A de facto blanket certification system prevailed which meant that foreign workers characteristically took the least desirable jobs. After their first year, most foreign workers were free to change employers, but employment and residency restrictions could limit their labor market mobility for periods of up to ten years in some cases (France and Switzerland). Foreign workers recruited in the 1960s are now beginning to diffuse into all areas of the economy, but one legacy of restrictions placed upon foreign worker employment is their concentration in certain industries, such as automobile manufacture and construction.

In Germany and in France, heavy foreign concentration in certain jobs, such as automobile assembly line work or construction, has resulted in a complex (and not fully understood) socioeconomic phenomenon wherein native workers come to shun jobs identified with foreign labor. As native workers desert these jobs, industries become all the more dependent on foreign labor. Some employers seem to have put themselves on a treadmill whereby decisions to hire large numbers of aliens ensure a continuing and growing need to do so in the future. Once an occupation becomes identified as a foreign worker-type job, even special inducements may not lure back native workers. In France, the government undertook a program aimed at attracting Frenchmen back to jobs, such as construction work, where large numbers of aliens are employed. The effort, despite much publicity, had very modest results.

Aside from this process of social devaluation of jobs characteristically held by aliens (which connotes deteriorating working conditions), large-scale foreign worker admissions clearly had deleterious impacts upon certain industries. In the French construction industry, for example, real wages have steadily declined relative to wages in comparable job categories. Working conditions have deteriorated to the point that the inability of employers to recruit skilled French labor seriously threatens the viability of the entire industry. In other European industries, however, there are few, if any, indications of adverse effects. This is particularly true in heavily unionized industries with concentrations of foreign workers. Foreign workers, incidentally, unionze at a rate that approximates the rate of natives in Germany, France and Switzerland. Short-term migrants are much more difficult to unionize than long term migrants although a very large component of the Swiss construction union's membership is made up of short-term seasonal workers.

If there is little, if any, evidence of outright native worker displacement by foreign workers, it also is true that displacement has become a retroactive issue. Aliens frequently are blamed for increasing rates of unemployment and jobs have to be found for the second generation of aliens reaching employment age. After the recruitment halts, most countries adopted priority to native worker-type policies which guaranteed that a native worker (which includes long-term alien workers) would get preference over short-term alien workers if both applied for the same job. However, this provision did not permit native workers to "bump" aliens from their jobs as sometimes alleged.

Clearly, there is serious potential for adverse effects upon indigenous labor in any U.S. expanded temporary foreign worker program scenario. The existence of institutions such as factory councils and effective nationwide employment offices in Germany reduced the potential for conflict inherent in postwar European foreign labor policies. These institutions are lacking in the United States and the lack thereof would appear to condemn any expanded U.S. foreign worker policy to constant controversy such as has characterized the H-2 program in recent years. During the period of large-scale foreign worker recruitment in Europe, unemployment rates hovered around zero as compared to the currently high rate of unemployment in the U.S. Hence, there would seem to be enormous potential for controversy in the U.S. whereas adverse effect-type considerations only became retroactive issues in Europe. The most relevant labor market tests that possibly could be applied in the U.S. context are to be found in the administration of seasonal worker programs in France and in Switzerland.

Foreign worker programs in Western Europe resulted in diverse forms of discrimination from the realm of housing to employment. By its very nature, temporary foreign worker policy is discriminatory in a democratic setting because residency rights hinge on employment. The European experience would suggest that temporary foreign worker policy, in and of itself, is no safeguard against exploitation of aliens and is as likely to engender discrimination as it is to end it. The types of policies likely to result in the smallest measure of alien overstay and permanency are also those which are the least desirable when judged against democratic ideals. Hence, it is that Swiss and French seasonal programs are very effective in securing migrant worker return but condemn migrants admitted under the programs to a somewhat slave-like condition at the margin of French and Swiss society. There can be no serious consideration of foreign worker integration if the workers are constrained to return home each year.

In terms of bilateral relations, several European countries have experienced strain in their relations with labor-sending countries as a result of foreign worker-related issues. Most notably this has been the case of Franco-Algerian, Italo-Swiss and Turco-German relations. Adoption of an expanded U.S. temporary foreign worker program could ameliorate bilateral relations with Mexico and other labor-sending countries but there also is great potential for disagreement in such programs over the long run. Certainly, the U.S. would be well-advised to inaugurate an expanded program in close cooperation with officials from the labor-sending countries. Reference also should be made to international norms and instruments concerning foreign worker employment as European policies were considerably influenced by institutions such as the ILO and the OECD.

Could the Europeans have avoided their present problems? Given the democratic nature of their societies and the fact that huge numbers of aliens were admitted to take jobs of a permanent nature, probably not. It was inconceivable for most Europeans to constrain foreigners to leave against their will if the alien had work. It also was inconceivable to deny alien workers the right to be accompanied by their families after twelve to fifteen months. If the Europeans had limited foreign worker employment to jobs of a truly temporary or seasonal nature perhaps many of the untoward consequences of foreign worker policy could have been avoided. But French and Swiss seasonal worker programs, which were limited to putatively temporary jobs, also involved serious problems. For example, the provision that seasonal workers not be allowed to be joined by their families resulted in considerable problems of illegal alien entry and employment. Judging from the European foreign worker experience, then, there is reason for grave doubts as to the advisability of expanding U.S. temporary foreign worker policy, especially if such a policy would permit temporary foreign worker employment in jobs of a permanent nature.

Given the problem-ridden history of past American experiments with temporary foreign worker policy and the shortcomings of European guest-worker programs, if U.S. temporary foreign worker policy is to be expanded, such expansion should be modest and carefully thought out. The small-scale expansion envisaged by the Administration will not significantly attenuate the illegal alien problem but it is preferable to the large-scale, European-like temporary foreign worker policy advocated by some Americans. In the worst scenario, the Administration's program could become a relatively minor complementary problem alongside a persistent and salient illegal alien problem. In the best scenario, it might slightly reduce the inflow of illegal aliens and, more importantly, help secure employer support for the Administration's immigration "package." Employers fear that legalization, sanctions and other measures will deprive them of putatively irreplacable foreign labor. A modestly expanded temporary foreign worker program could respond to the most legitimate labor shortage cases. However, all of this is but speculation and, in the past, temporary foreign worker programs have had an uncanny history of resulting in problems more so than serving the public interest.

French and Swiss Seasonal Workers: Western Europe's Braceros

Recent comparisons of Western European and American foreign worker experiences with a view toward the current U.S. debate over an expanded non-immigrant labor policy have been faulted for failing to distinguish sufficiently between the diverse categories of foreign workers found in Western Europe. Some critics argue that the welter of foreign worker nationality groups living under different legal statutes in the various Western European states defies generalization. Hence, there are no "lessons" to be learned from Western Europe's postwar labor migration as results are variable and ambiguous.[1] Other critics have charged that global comparisons of foreign workers in Western Europe with

U.S. nonimmigrant labor programs are mistaken because only Swiss and French saisonniers (or seasonal workers) are truly comparable with temporary workers in the U.S. context.[2] Still other analysts have indicated a need for greater definitional clarity, insisting most notably upon the distinction between guestworkers and temporary workers in deriving appropriate lessons for the U.S. policy debate from the Western European experience.[3]

Before considering the merits of these criticisms, a few preliminary lexical observations are in order. First, in Western Europe as in the United States, there is no consensus on vocabulary in the realm of immigration policy. Just as terms like "illegal alien" and "undocumented workers" have different connotations in the U.S. context, so too do various European terms have political overtones and hence controversial usage. In France, alien workers are referred to either as immigrés or travailleurs étrangers. Immigré implies permanence and consequently is favored by leftists concerned with working class unity and those Frenchmen favoring continued immigration. Travailleur étranger, on the other hand, is the term most often used by the government. This second term has a less sympathetic nuance and is more aptly descriptive of the revocable legal status of most alien workers in France. While France traditionally has favored permanent immigration, its postwar alien labor policy has not been a uniform immigration policy in the classical sense. Rather, the French have combined classical immigration policy with nonimmigrant labor policies, including a relatively small seasonal worker program. The nonimmigrant labor policy reality beneath the veneer of French immigration policy has long been apparent in the distinction made between "assimiliable" (Portuguese, Italian and Spanish) migrants and "unassimiliable" (Maghrebian, Black African and Turkish) migrants.[4] Recent official pronouncements favoring foreign worker repatriation (including a cash bonus program for returning migrants) should have dispelled any remaining illusions concerning French alien labor policy.[5] Despite its immigrant-welcoming tradition, postwar France is comparable with the nonimmigrant-welcoming Federal Republic of Germany and Switzerland in the alien labor domain.

Neither Germany nor Switzerland traditionally has been an immigrant-welcoming society. This is most apparent in the difficulty of their naturalization procedures.[6] Postwar labor migration to the two countries was assumed to be of a temporary or nonpermanent nature.[7] Although widely believed, neither Germany nor Switzerland has implemented mandatory rotation policies for nonseasonal foreign workers.[8] Rather than relying on administrative withdrawal of work and residency rights, the Germans and Swiss, by and large, have depended upon economic factors and the assumed wish of migrants to return home to effectuate desired return. That Swiss and German expectations concerning the temporary nature of postwar labor migration were misguided, is now obvious. Many foreign workers did return as expected, but a significant fraction stayed on. This propensity to stay, when compounded by the massive volume of postwar labor migration, resulted in millions of foreign workers and their dependents becoming largely unanticipated, long-term residents, but not citizens, of Germany and Switzerland. Hence, Switzerland and Germany have become de facto immigration lands while French migration policy, ironically, has been moving toward the German and Swiss "models."

In German, alien worker translates as Fremdarbeiter. This term, however, is unacceptable in the Federal Republic due to the tragic plight of millions of "volunteer" or forced alien laborers in wartime Nazi Germany. Although sometimes heard, official utilization of Fremdarbeiter in the postwar period was almost unthinkable. Hence, the term Gastarbeiter or guestworker came into usage when foreign workers began trickling into Germany in the late 1950's. The now frequently heard English-language neologism guestworker, then, has a specifically German connotation and refers to nonimmigrant labor policy where alien workers are not expected to become citizens but neither are they required to repatriate against their will.

In addition to Gastarbeiter, the term, auslaendische Arbeitnehmer (literally foreign employee) is widely used when referring to Germany's foreign workers. Indeed, this is the official term used by the government and is favored in trade union and left-leaning circles. To some Germans, Gastarbeiter conjures up the negative image of rotation policy although other Germans feel the term conveys a benign, positive ring. In France, the term guestworker (travailleur-hôte) clearly carries a negative nuance because it is associated with German policies which are widely, if incorrectly, seen as forcing foreign workers home in economic downturns and as being generally harsher than French policies toward migrants.

Significantly, in Switzerland, Fremdarbeiter and travailleur étranger are practically the only terms used. Switzerland does not bear the onus of Nazi mistreatment of alien labor. Consequently, usage of Fremdarbeiter persists. Nor does it share French ambivalence as an immigrant-welcoming society. The term, immigré, is rarely heard in Switzerland and certainly is not used by the government with reference to foreign workers.

Comparison of Western Europe and the United States in the foreign labor policy area, thus, must proceed with this lexical diversity, but broad policy convergence, borne in mind. Since well over half of Western Europe's foreign workers are located in France, Switzerland and the Federal Republic of Germany, U.S.-Western European comparison is facilitated by limiting it to these three countries. The essence of the Western European experience with foreign labor is to be found in this sovereign trio as is parsimony and considerable contextual variation (i.e., colonial and noncolonial legacies, EEC and non-EEC status) indicative of Western European-wide dissimilarities.

Limitations in Broad, Western European Comparison

British immigration policy is difficult to compare with most continental foreign labor policies because the vast majority of British immigrants have citizenship rights including voting and nonrevocable residency. Similarly, Sweden presents difficulties in comparison because so much of its foreign population is from neighboring Finland. The adaptation problems encountered by Finns in Sweden are scarcely comparable with those of Arabs in France, Turks in Germany or even Italians in Switzerland. Like Great Britain, and France, Belgium and the Netherlands have a colonial heritage. Belgium, moreover, has an immigrant-welcoming tradition. The addition of these two countries experiences with their significant foreign labor populations, though, would not seem useful for reasons of parsimony and because the Dutch and Belgium experiences largely parallel those of France, Switzerland and the Federal Republic. Norway, Denmark, Austria, Luxemburg and Lichtenstein all have had foreign worker policies of sufficient size to become controversial, but again their inclusion would detract from more than improve the comparison.

All of this is not to argue, of course, that the experiences of these purposively excluded countries are not instructive. To the contrary, close attention should be paid to the Belgian experiment in community councils for foreign labor representation and Sweden's grant of local and regional voting rights to migrants.[9] Great Britain has an apparently well-working, but miniscule, temporary worker program and so forth. The point, however, is that patterns of policy impacts discernible in France, Switzerland and the Federal Republic generally hold for Western Europe as a whole although the variable scale of programs magnifies or reduces the saliency of impacts. Hence, the problem of Norwegian racism towards Norway's tiny (70,000) foreign worker popualation is less salient than France's racial problem but both problems are part of Western Europe-wide pattern of racism and discrimination associated with foreign labor policy.[10]

Constructive or Misleading Criticism?

What, then, are the merits of recent criticisms of American efforts to inform the U.S. public policy debate over nonimmigrant workers in light of postwar Western European alien labor policies? The first objection, that there are no lessons to be derived from the Western European experience, can result from one or a combination of several reservations. The most often heard reservation is that the differences between the U.S. and Western European societies are so many and so fundamental that the very notion of attempting to learn cross-nationally is unsound. This argument is not novel as "comparativists" and "contextualists" have been bickering for decades over the appropriateness of comparisons. Comparativists generally can be said to stress similarities whereas contextualists stress differences. The notion of comparing Western European and U.S. immigration policies is based on the assumption that these advanced industrialized societies share fundamental economic, sociocultural and political characteristics which make comparison meaningful. After a certain point, debate between comparativists and contextualists becomes a dialogue of the deaf. At the limit, the objection that there are no lessons to be learned by the U.S. smacks of the idiographic fallacy or the mistaken belief that all societies are unique.

A second, sometimes related, reservation stems from the opinion that the Western European experience is too variegated and ambiguous to provide lessons for the U.S. public policy debate. Here, there is disagreement over the meaning (or discernible results) of the Western European experience and the kinds of generalizations that have been made. It is objected that negative assessments of the Western European foreign worker programs are exaggerated and obscure the positive aspects of the foreign worker sojourn in Western Europe. If some untoward results are conceded by these critics, the stress is on the benefits accruing to migrants, their families, their host societies and their societies of origin created by the opportunity to work in Western Europe.

On one level, the response to this line of criticism is that it is not adequately informed. On another level, the response is that broad cross-national comparison has to focus more on the forest than the trees. The comparisons in question have stressed comparative variations, including elucidation of the various legal statutes demarcating, for example, EEC nationals from seasonal workers, but not at the cost of neglecting discernible patterns of impacts from country to country. The reason for comparing the U.S. with three Western European countries rather than one is precisely to control for foreign labor policy impacts attributable to contextual factors such as colonial legacies, national cultural peculiarities, etc. While differences are of intrinsic interest and can be instructive in the sense of cross-national public policy learning, it is the patterns or cross-national similarities which are the keys to deriving lessons for the American context.

Patterns indicate that the observed behavior or impacts are characteristic results of foreign labor policy in advanced industrial societies. Since the United States similarly is an advanced industrial society, recognition of these patterns leads to the drawing of lessons which are intended to enhance the rationality of U.S. public policy planning in the area of immigration policy and law. The argument has never been that the United States will necessarily replicate the Western European experience if it opts to expand nonimmigrant labor policy. Rather, analysis of the Western European experience becomes a method of informed reflection crucial to rational policy debate, choice and planning. Discernment of patterns of impacts resulting from foreign worker policy in other advanced industrial societies suggests likely consequences of foreign labor policy in the U.S. context. These consequences are not inevitable. Indeed, the purpose of cross-national learning is to improve U.S. nonimmigrant labor policy if it should be expanded as much as it is to sound a tocsin about certain problems associated with nonimmigrant labor policy. The intent has been to avoid Western European mistakes as well as to learn from their strong points and experience, particularly with regard to the administration of foreign worker programs.

The concept of comparative learning in the realm of immigration policy, then, is defensible. Criticism to the effect that comparisons have exaggerated the untoward impacts of Western European foreign labor policies generally neglects or minimizes glaring patterns of inequalities in jobs and housing, discrimination, migrant-related educational problems, public controversies and tension over foreign worker policy, administrative shortcomings and unintended long-term foreign worker residency. The facts, in short, bear out a negative assessment of the Western European experience with foreign workers and provide ample grounds to wonder whether the idea of introducing foreign labor on a nonimmigrant basis into democratic societies is intrinsically flawed.

As to the second objection holding that only French and Swiss saisonniers are truly comparable with nonimmigrants in the United States, the misunderstanding here is with the nature of the current public policy debate in the U.S. and, surprisingly, the nature (rather than the rhetoric) of Western European foreign worker policies. A seasonal worker can be defined as an alien entitled to work for a period of up to a year before being required to repatriate (perhaps with the option of returning for the next "season."). Braceros and H-2 workers, thus, largely can be called seasonal workers. However, the U.S. public policy debate has been far-ranging and has included many guestworker-type proposals in addition to seasonal worker suggestions.[11] Hence, consideration of the nonseasonal foreign worker experience in Western Europe is germane to the current U.S. public policy debate. Practically all conceivable options are being considered. Secondly, it generally is inaccurate to consider Western Europe's nonseasonal foreign workers as immigrants. This appelation is consistent neither with governmental policies nor the behavior of many migrants.

As previously indicated, many migrants did return home after relatively brief sojourns in Western Europe. Many of the migrants who have stayed on do not wish to naturalize. This is due, in part, to the "myth of return" and to homeland and host society policies discouraging naturalization. That Germany and Switzerland have become de facto immigration countries is incontestable. However, to describe migrant workers there as immigrants obscures fundamental differences between their postwar foreign labor policies and those of a classical immigrant-welcoming society like the United States. As for the French case, it is misleading to describe foreign workers as immigrants when Mr. Stoleru, the French minister in charge of foreign worker affairs, states that France, "...which formerly was an immigration country will become an emigration country."[12] Certainly, it is wishful rather than accurate to describe France's foreign workers as immigrants when the government announces its intention not to renew some 300,000 Algerian work permits, hopes to reduce the foreign worker population by some 200,000 souls annually and provides a cash bonus to repatriating "immigrés."[13] The popular image of France as an immigration country is perhaps more fiction than fact, although its naturalization procedures clearly are more liberal than those of Switzerland and the Federal Republic. The upshot of the above is that broad-gauged comparison between the United States and Western Europe is appropriate and that comparison should not be limited to saisonniers, braceros and H-2s.

The third line of criticism suggesting that comparisons have been hindered by a certain definitional murkiness has merits as well as drawbacks. The critic, W.R. Bohning of the ILO, proposes a definitional distinction between temporary workers and guestworkers. The former are seen as short-term workers required to repatriate while the latter are alien workers with indefinite work and residency authorization but who are expected, not required, to return home.[14] The object of Mr. Bohning's constructive criticism is the generic usage of temporary workers to refer to foreign workers in the United States and Western Europe.

American utilization of the term temporary workers stems from the word temporary meaning nonpermanent. In the American legal and policy context, the important distinction is between nonimmigrant or temporary labor and immigrant or expected-to-become-citizen labor (resident aliens). Since Western European countries largely did not intend their foreign labor policies to eventuate in citizenship, usage of the term temporary worker was justified in that these workers were not seen as immigrants in the American sense but rather the status of these workers approximated that of nonimmigrant labor in the U.S. context. It is significant that an important percentage of the H-2 "temporary" workforce, most notably in the U.S. Virgin Islands, actually is permanent as their temporariness is an administrative fiction.[15] Further, as previously indicated, the term guestworker is a neologism not to be found in English-language dictionaries. Its usage in the French and Swiss contexts similarly poses problems. Hence, it would seem that the use of any nomenclature has its drawbacks and that not much should be made of a putative confusion stemming from generic usage of the term temporary worker. As the following analysis will suggest, the condition of seasonal workers in France and Switzerland is far more similar to that of nonseasonal foreign workers than it is different. Generic usage of the foreign worker or temporary worker was appropriate as the condition of seasonal and nonseasonal alien workers is not fundamentally dissimilar and important differences, such as the relative inferiority of seasonal migrant worker rights vis à vis those of nonseasonal alien workers, were noted in most of the comparisons undertaken.

French and Swiss Seasonal Worker Programs Compared

Only France and Switzerland currently authorize seasonal worker programs among Western European countries. It seems that several tens of thousands of mainly Italian agricultural workers were brought into West Germany on a seasonal basis in the 1950s but the Federal Republic no longer has a distinctively seasonal work permit system.[16] As indicated by Table 1, alien seasonal employment developed steadily in the postwar period before cresting in Switzerland by 1964 and in France by 1972-73. Saisonniers represented

[Table 1]

more than 30% of the total foreign workforce in Switzerland (not including frontaliers) in 1964. By contrast, seasonal workers represented only 8 % of the total French alien workforce at their numerical highpoint in 1972.[17] The seasonal component of Swiss foreign worker policy, hence, is far more significant. In 1979, seasonal workers represented less than 5% of the total French alien workforce as compared to 19 % in the Swiss case.

A second important difference between the two seasonal work programs stems from sectorial variations between the two economies and from variable legal definitions of seasonal employment. Seasonal worker employment in France, as indicated by Table 2, is overwhelmingly concentrated in France's argicultural sector. In Switzerland, seasonal worker employment is mainly nonagricultural. The construction, hotel and restaurant industries are the major employers of Swiss saisonniers.

[Table 2]

France and Switzerland also employ largely different nationalities as saisonniers. The vast majority of Swiss seasonal workers are Italian citizens with a smaller number coming from Spain. In France, over 80% of all seasonal workers are Spanish citizens with a growing minority from Morocco. Table 3 indicates the changes which have taken place in the ethnic composition of the French seasonal workforce in the postwar period. The formerly significant Belgian and Italian components, in part due to the creation of the EEC, have virtually disappeared while North African seasonal employment surged in the 1970s.

[Table 3]

As suggested by W.R. Bohning, the distinguishing characteristic of seasonal labor among Western Europe's diverse foreign labor statutes is the administrative requirement of mandatory return home within a period of less than a year. While other foreign workers may choose to return home indefinitely or for a vacation, only seasonal workers are required to leave and are not guaranteed a right to return. The specificity of the seasonal worker's legal statute theoretically follows from the specificity of his or her employment in jobs of a temporary or nonpermanent nature such a harvesting or tourism-related, seasonal hotel and restaurant work. Legally, in both France and Switzerland, seasonal worker employment is limited to temporary jobs. However, in both cases, there has been vocal criticism that some seasonal workers actually are employed in jobs of a permanent nature with their "seasonality" being an administrative fiction.[18] The problem of so-called faux saisonniers or seasonal permitholders working at permanent jobs underscores the point that, in fact, there is a continuum between seasonal worker and guestworker employment, not the sharp demarcation that some observers posit. The distinction is further blurred by the Swiss practice of granting long-term seasonal workers guestworker or permanent status and the past willingness of the French to adjust seasonal entrants to permanent status.

Western European seasonal labor authorization follows the contours of non-EEC foreign labor employment procedures in general. As with other categories of foreign workers (excluding Western Europe's growing illegal alien population), seasonal employment in France and Switzerland is sanctioned by bilateral labor agreements between France, Spain, Morocco, Tunisia and Portugal, on the one hand, and Switzerland, Spain, and Italy on the other. In the French-Spanish case, the 1961 agreement formalized traditional seasonal labor migration post facto while the Italo-Swiss program was authorized by a 1948 agreement. This 1948 agreement was subsequently revised in 1964, in large part because of Italian and Swiss trade union dissatisfaction with the status of Italian seasonal workers. Aside from the yearly return requirement and employment in temporary jobs, the third defining characteristic of seasonal workers traditionally has been their disfavored legal status vis à vis other foreign workers. Both the French and Swiss, however, have liberalized the status of their seasonal workers through the postwar period. In part, this liberalization is the result of bilateral negotiations through mixed commissions established to oversee implementation of the labor accords. It is important to note, however, that the existence of a mixed commission did not prevent Swiss treatment of Italian workers, especially seasonal workers, from becoming an important source of strain in Italo-Swiss relations.[19]

As with all foreign worker employment, employer demand is the necessary precondition to seasonal labor migration. In the French and Swiss cases, it is stipulated that employer recourse to alien seasonal workers is only permissible in designated seasonal industries if resident citizen or foreign labor cannot be hired and if prevailing wages and working conditions are not prejudiced. Determination of the seasonal character of an industry is controversial in both cases.

In Switzerland, only hotels open part of the year or experiencing peak occupancy periods where occupancy is twice the normal rate generally qualify for seasonal labor. In the restaurant industry, business receipts during the "season" must be 50% higher than normal in order to qualify.[20] In other industries, most notably construction, a tradition of employing Italian seasonal workers seems to be an important criterion for continued employer access to seasonal workers. Swiss administrative procedures call for disputed rulings to be resolved by cantonal committees of economic experts or, if need be, by OFIAMT. The persistent controversy over _faux saisonniers_ in Switzerland indicates the sensitivity of the issue of job definition to Swiss trade unions, emigrant worker groups and Italo-Swiss relations. Indeed, it was largely the political-diplomatic controversy over _faux saisonniers_ which recently prompted the Swiss government to permit seasonal workers to adjust their status if they worked in Switzerland for a period of 36 months over four consecutive years.[21] Since adjustment of status has been permitted, 3,000 to 12,000 "seasonal" workers annually have acceded to a more secure status, as indicated by Table 4.

[Table 4]

The seasonal character of agricultural harvests renders determination of job temporariness nonproblematical for the bulk of France's _saisonniers_. The seasonal character of hotels and restaurants designated for _saisonnier_ employment likewise seems noncontroversial. The French _faux saisonnier_ problem is largely confined to alien (mainly Moroccan) farmworkers receiving contracts longer than four months. Sources familiar with the situation of alien agricultural workers in the _Midi_ report that the employment characteristics of many longer-term _saisonniers_ are indistinguishable from those of non-seasonal foreign agricultural workers. The only difference between them is that the seasonal worker's yearly "vacation" in Morocco or elsewhere is mandatory not freely chosen.

Satisfaction of the no displacement and adverse effect criteria are largely distinct questions relative to the temporary job definitional issue and are best discussed in conjunction with a description of recruitment procedures. In France, employer requests for seasonal workers first are sent to the local employment office (ANPE). If local employment officials concur that French workers cannot be found, the employer request is forwarded to the Office National d'Immigration (ONI), the governmental agency which oversees all immigration matters. In Switzerland, the formal procedure is significantly different. Swiss employers may contract directly with seasonal workers before presenting the contracts to Swiss employment officials for certification that Swiss workers cannot be hired and formal authorization of residency. The Swiss system, hence, is more laissez-faire than in France where any contracting between employers and seasonal workers legally takes place under the auspices of the ONI.

If administrative certification (that adverse effects will not occur) takes place at opposite ends of the contracting process in the two cases, labor market tests (or lack thereof) for adverse effects are quite similar in the two cases. Informality and a wide margin of local administrative discretion characterize certification procedures. In most cases, prior employment of a certain number of seasonal workers almost ensures employers that they will be granted a similar allotment of seasonal workers in the future. However, employers who are caught employing aliens illegally or grossly violating labor laws risk the permanent loss of this quasi-automatic renewal.

Certification of seasonal workers, is largely a question of the judgement of local and national employment officials. The most important criterion determining certification is the overall employment situation. As indicated in Table 1, global seasonal worker employment has declined in recent years. However, seasonal worker employment was not included in the bans on further admissions affecting their categories of non-EEC foreign workers. Postwar French and Swiss seasonal worker programs developed in a period of general manpower shortages, especially of manual labor. Employer requests for seasonal workers generally seem not to have been questioned on labor market grounds because employers were looking for workers in jobs generally shunned by the regular local workforce. Not only was the job offered supposedly temporary and hence not suited to career-minded workers, but seasonal work also is characteristically menial, boring, physically arduous, dirty and relatively ill-paid. In most instances, employment officials seem to have routinely certified employer requests for seasonal workers on the assumption that native workers (other than students) could not be found for these "temporary" jobs in a tight labor market. As the general employment picture clouded and sociopolitical tensions over foreign workers increased, it became more difficult for employers to convince authorities that additional seasonal workers were needed. However, seasonal workers (despite high unemployment in France) continue to be seen as an irreplaceable and economically beneficial complement to the permanent workforce even if some French officials speculate that mechanization will continue to eliminate seasonal jobs in agriculture (as it did in the rice and beet harvests) and thereby substitute for seasonal labor over the long run.

To prevent seasonal worker employment from adversely effecting wages and working conditions, the French and Swiss require seasonal work contracts to reflect prevailing wages in the industry. Further, they rely upon labor law enforcement to safeguard working conditions. In France, seasonal worker wages are set mainly by departmental prefectures after consultations with representatives of employers, trade unions and the emigrants. In Switzerland, wages are more likely to be set according to industry-wide collective bargaining agreements or, to a lesser extent, by reference to wage statistics kept by the Federal government.

Once certified, a French employer's request for seasonal workers is transmitted to a branch office of the ONI abroad. As in the case with non-Algerian, non-EEC "permanent" workers, employers either can request the services of a particular foreign worker known to them (nominative request) or they can send a job description and contract to be filled on the spot by ONI officials in Spain or Morocco (anonymous request.) About ninety percent of the French seasonal workforce is hired through nominative requests.[22] Employers tend to hire back "pleasing" or "good" workers or ask such workers to provide them with the names of friends or relatives eager for seasonal employment. In Switzerland, employers also know many of the seasonal workers they hire although an estimated one-third of the saisonnier contingent never has worked in Switzerland before in any given year.[23] Critics charge that recruitment procedures in both cases encourage seasonal worker docility and an employer-employee relation conducive to exploitation of the worker. The high rate of nominative contracts also can be seen as undermining emigrant-sending society efforts to organize emigration in a fashion that responds to their needs (i.e. retention of trained, productive workers with emigration for redundant or unskilled workers) as a nominative contract precludes a role in determining who is to emigrate.[24]

The French ONI arranges for contracts to be signed abroad (after a selection process in the case of anonymous contracts) while Swiss employer contracts with seasonal workers are considered provisional until approved by Federal labor officials. ONI contracts often are translated for the prospective *saisonnier* but not always, Upon receiving authorization to emigrate, a seasonal worker must still pass a medical examination. This is accomplished by the ONI in Spain or Morocco. In the Swiss case, examinations are given at the border, frequently causing long delays for *saisonniers* whose permits become valid in blocs and occasioning a loss of money and time for those would-be *saisonniers* turned back for medical reasons.[25] As part of the fee assessed French employers (390 francs per seasonal farmworker and 600 francs for nonfarmworkers), the ONI organizes and pays for the transportation of French saisonniers. In the Swiss case, transport costs are reimbursed by employers but transportation is not organized by the Swiss government.

Length of work and residency authorization for Western Europe's seasonal workers is variable. In France, it can range from as little as three weeks for Spanish seasonals harvesting grapes to the normal eight months and even beyond that in exceptional cases. In Switzerland, permits also run according to the "seasons" in various industries but are not to exceed nine months except in the case of so-called *anciens saisonniers*.

The Saisonnier Condition

The legal status of seasonal workers generally is considered inferior to that of most other foreign workers because *saisonniers* are "tied" to one employer. They are not free to change jobs or location like other workers and their residency and work rights hinge on fulfillment of the contract.

Once having arrived in France or Switzerland, seasonal workers or their employers sometimes break their contract agreement. Not infrequently, seasonal workers find that living and working conditions are not what they expected. On the employer side, unpredictable crop losses (such as in southwestern France in 1977 and 1978) or business slumps in addition to seasonal worker professional or personal inadequacies may lead to rupture of contracts. In France, a fired seasonal worker, if willing and lucky, can be hired for similar seasonal work or else is obliged to repatriate. A seasonal worker who has worked for a period of at least four weeks and then been fired, qualifies for unemployment compensation if labor law inspectors agree that the employer was at fault.[26] If the alien is determined to have broken the contract, he may be required to reimburse the employer for ONI-assessed transportation costs before being forced to repatriate.[27] In Switzerland, saisonniers terminated before their contracts are up may be accorded financial compensation but generally are obliged to repatriate. An employer can replace a seasonal worker who fails to fulfill the agreement.

Seasonal workers, unlike slaves, (a term not infrequently used to describe saisonniers and foreign workers in general) can refuse unacceptable work but, unlike citizens and most other foreign workers, their residency and livelihood is extraordinarily dependent upon one employer.[28] In theory, seasonal workers benefit from most labor and social rights. They can join unions, file labor law grievances, are protected by minimum wage requirements, receive health insurance and qualify for old age pensions. All these rights and protections are contingent, however, upon the employment offer of one employer. Continued residency and/or renewed residency depends on being offered a job in the face of almost unlimited labor supply. This extraordinary dependency upon employers is the key to understanding the inferior legal status of seasonal workers vis à vis citizens and other categories of foreign labor and to comprehension of the largely unenviable socio-economic status of Western European saisonniers when judged against the normal standards of Western European social democracies.

Unlike other foreign workers, who after one year abroad usually can be joined by their immediate family, seasonal workers generally are prohibited from bringing along their families. A major exception to this rule is the case of Spanish migrants in French agriculture who have special status. In Switzerland, family members of a saisonnier have extensive visiting rights (two three-month visits during a year) but no right to residency like family members of other foreign workers. In France, family members can visit for periods of up to three months.

Separation from loved ones is part of the saisonnier's lot and most seem to accept it. Many do not, however, and this has created a significant illegal alien problem. In Switzerland, the spouses and children of seasonal workers who have overstayed their visits are generally thought to constitute an important part of the Swiss illegal alien population.[29] The question of illegal alien children, as in the United States, is particularly sensitive because out of status children tend not to be sent to school.[30] The Swiss do allow childless couples to work jointly as saisonniers but parents with children cannot both become saisonniers.

In France, the problem posed by saisonnier dependents is more one of unlawful labor than illegal residency. Spanish harvesters, unlike other French seasonal workers, are permitted to bring their families along and many, if not most, do. Although family members are prohibited from working and employers risk heavy fines and loss of access to foreign labor if illegal alien labor is discovered, unauthorized labor by saisonnier spouses and children seems widespread. This situation is even acknowledged by French immigration officials long associated with the seasonal worker program.[31]

Quite simply, it is very difficult to enforce laws barring dependents from working. Hard-pressed agricultural labor inspectors cannot constantly inspect fields first-hand. When they do, children and spouses can quickly hide. Since alien farmworkers usually are paid piece rates for the crop they harvest, illegal labor is difficult to detect in wage records. The earnings of family members are paid to the legal saisonnier saving the employer unemployment and social security tax costs for the labor as well.

Condoning illegal labor by saisonnier dependents is by no means universal among French farmers. Not only does an employer risk a fine and loss of permission to hire alien workers, but illegal women and child laborers also are not covered by health and accident insurance. A dramatic incident in Southwestern France in 1978 recently underscored the dangers of employing saisonnier dependents illegally. A young Spanish woman working illegally was crushed by a farm implement. Afraid of legal retribution, the employer tried to escape detection by quickly arranging to have the body sent back to Spain. As news of the death spread, however, protests by saisonniers and local activists led to investigations into the circumstances of the woman's death and eventually the farmer was forced to admit his utilization of illegal labor. The incident focused national attention on employer abuses of seasonal agricultural labor.[32]

While illegal agricultural workers are exposed to many forms of exploitation, perhaps the most harmful effects are upon underage or child workers. Child labor, of course, has been universally condemned (most recently by the ILO in 1979).[33] Yet, the French *saisonnier* program creates circumstances in which illegal child labor apparently flourishes. The French educational system, in conjunction with Spanish authorities, makes an effort to provide educational facilities for migrant children but the transient nature of the *saisonnier's* stay mitigates against migrant child class attendance.

Along with issues related to *saisonnier* dependents, seasonal worker housing conditions occasionally spark public controversy. Both French and Swiss employers must be able to reserve adequate housing for seasonal workers as a condition for their employment. Formal housing requirements are quite high, but enforcement of the standards frequently is lax. Migrant workers often are unaware of housing standards or are unwilling to "make trouble." Since many seasonal workers must live on or near their work places, they frequently live in converted farm buildings or, in the Swiss construction indistry, in quickly-build wooden barracks. Seasonal worker housing, like foreign worker housing in general, is disproportionally substandard. In some instances housing conditions have motivated *saisonnier* strikes and protests. The famous Murer strike in Geneva in 1970, for example, was sparked by Spanish seasonal worker dissatisfaction with their housing conditions.[34]

The Murer strike only involved some two hundred seasonal workers but it jolted Swiss unions and the placid Swiss polity in general. The major Swiss union, (SGB) initially condemned the strike as disrupting the Swiss labor peace but then came out in support of the *saisonniers'* grievances. Following a long period of indifference, even hostility, toward seasonal workers (and foreign workers generally), Swiss trade unions have sought to improve the conditions of seasonal workers in particular. The trade unions' stance was motivated, in part, by concern over foreign worker radicalization.[35] It was further motivated by a desire to stabilize and integrate alien workers in the face of xenophobic pressures. Despite the limited duration of the *saisonnier's* yearly stay, it is noteworthy that one-third of the Swiss construction union's membership was comprised of alien seasonal workers by 1961.[36] Changes in union policies favoring seasonal workers also reflected growing foreign worker membership within unions. The major

Swiss trade unions have supported the transformation of seasonal work permits into yearly permits and generally oppose any increase in the "discriminatory" seasonal permit quota.

French trade unions similarly take a dim view of the restrictive seasonal worker statute. While very few saisonniers in France unionize, all three major unions made considerable efforts on behalf of seasonal workers. Hence, the CGT departmental section in Hérault (an important grape growing area) distributes flyers to seasonal workers informing them of their rights and listing telephone numbers where legal help can be reached.[37] Force Ouvrière meets regularly with the Spanish UGT on seasonal worker questions and recently addressed a letter to the French government protesting alleged failures to protect saisonnier rights.[38] Similarly, the CFDT supports seasonal workers in their grievances against employers and, in some areas, dispatches members to verify that seasonal workers are being paid fairly. The CFDT charges that employers often pay saisonniers substandard wages for the work done or take illegal deductions for transport costs, etc.[39]

In addition to the unions, church organizations in Switzerland and France have played a prominent role in aiding seasonal workers and criticizing abuses of them. Local clergy and lay organizations often act as spokesmen for saisonnier grievances and exert moral and legal pressure upon employers to respect their obligations.[40] A notable example of church support for seasonal workers occurred in Valence, France in 1972 where Christmas midnight masses were cancelled as a sign of solidarity with North African seasonal workers on a hunger strike to obtain regular work permits.[41]

The special efforts of Western European trade unions and religious organizations on behalf of saisonniers is motivated by the extreme vulnerability of this work force to exploitation. Saisonniers tend to work long hours at physically-taxing jobs. Despite the difficulty of their work, many seasonal workers want to be invited to return and therefore may be willing to accept substandard wages and poor working conditions. That seasonal workers continue to accept work in France and Switzerland does not mean that their status is acceptable. Clearly, some organizations made up of foreign workers do not consider the saisonnier condition acceptable and have urged proscription of the seasonal work permit.[42]

Seasonal Workers and Guestworkers Compared

Unlike other categories of foreign workers, seasonal workers are required to repatriate. Accordingly, their rate of return is much higher than those of other permit groups. French immigration authorities report that, in recent years, over 95% of all seasonal workers have returned. ONI branches in Spain and Morocco are required to confirm that seasonal contract holders have returned. If a saisonnier's return is not confirmed, he or she is barred from receiving work in the future. French specialists on foreign labor matters feel that government estimates of *saisonnier* returns inflate the actual return rate and mask a growing illegal alien problem in the agricultural sector. They note that a seasonal work permit used to be a virtual ticket to "regularization" or permanent status. This practice stopped only with the Fontanet-Marcellin decrees and the "stabilization" of immigration in the period 1972-1975. The clamp down on regularizations sparked a period of social conflicts involving a goodly number of *saisonniers* desirous of permanent status along with other foreign worker categories.[43] While the government sometimes gave in, it usually did not and, by 1977, only some 405 *saisonniers* were listed as asking for regularizations.[44] The crackdown on regularizations probably accounts for the dramatic decrease in the number of Moroccan *saisonniers* from 19,168 in 1974 to 10,515 in 1975.[45] Seasonal contracts could no longer be easily transformed into permanent permits. Most observers agree, however, that a major consequence of the Marcellin-Fontanet (and later Gorse) decrees has been an increase in the illegal alien population, including presumably many former *saisonniers*.[46]

Among foreign worker nationality groups, Italians appear to have an unusually high return rate.[47] This characteristic contributes to the nearly perfect yearly rotation of seasonal workers reported by Swiss officials. Seasonal workers who violate their permits generally are barred from further employment in Switzerland. Before recent French toughening of immigration law enforcement, the Swiss Foreigners Police seemed more rigorous in controlling and tracking aliens than their French counterparts. This relative vigor of the Swiss policy perhaps accounts for the relatively low rate of permit violation in Switzerland although the Foreigners Police frequently is charged with excess zeal by foreign labor groups.

Aside from the question of mandatory return, seasonal workers share most characteristics of the guestworker condition except that negative aspects of the guestworker condition usually are amplified in the case of *saisonniers*. Like guestworkers, seasonal workers occupy the bottom rung of the socio-economic ladder. While other foreign workers eventually become free to change jobs, employers and location, and can nurture some hope of socio-economic advancement, seasonal permit holders are restricted to society's most unenviable jobs. Hard work, long hours and low hourly wages are alien labor characteristics amplified in the case of seasonal labor as is poor housing. The modest numbers of seasonal workers relative to other permit groups and the finite character of their sojourns make *saisonniers* less of a sociopolitical issue than foreign workers in general. Of all foreign workers groups, though, seasonal workers would seem to be the least integrated. They truly live at the margins of the societies in which they work.

Seasonal workers, like guestworkers, generally have had a beneficial impact upon Western European economies. Their presence does not seem to have impeded mechanization in French agriculture except, perhaps, in the case of green bean planters. There is little evidence of native worker displacement by seasonal workers although wages and working conditions in seasonal labor jobs areas always remain near minimal standards. Employer access to seasonal labor, however, can be viewed as a form of subsidy given employers.[48] In light of the problems of French agricultural policy, there is reason to wonder if labor subsidies given producers are not counterproductive when the French government is under international pressure to rationalize its agricultural sector. Perhaps a more fundamental question is whether the inequities fostered by the saisonnier status relative to social democratic norms are worth tolerating in view of the *saisonnier's* economic role. Despite the homeward flow of remittances and partial alleviation of unemployment due to seasonal work opportunities, the Italian government has voiced serious reservations concerning the lot reserved its seasonal workers in Switzerland.[49] The Spanish labor attaché in southwestern France also has voiced misgivings although Franco-Spanish relations do not appear to have been strained by their bilateral seasonal labor program.[50]

Footnotes

1. This was the theme of Wayne Cornelius' comments made at the Political Economy of International Migration panel, American Political Science Association convention, August 30, 1980, Washington, D.C. Cornelius' viewpoint generally is shared by a number of other distinguished American immigration experts including: Edwin Reubens, Charles Keeley and Willie Jasso.

2. Georges Rochcau, "Quelques aspects des migrations intra-européennes", *Migration News*, (ICMC, Geneva), 1980.

3. W.R. Böhning, *Guestworker Employment with special reference to the Federal Republic of Germany, France and Switzerland - lessons for the United States*? (Center for Philosophy and Public Policy, University of Maryland, 1980).

4. Georges Tapinos, *L'Immigration Étrangère en France*, (PUF, Paris), pp. 18-19.

5. *Le Monde*, October 5, 1978 and A Lebon, "L'aide au retour des travailleurs étrangers," *Économie et Statistique*, No. 113, July-August, 1979.

6. In Switzerland, an alien worker must wait 12 years before being able to petition for citizenship. In the Federal Republic, the wait is 10 years. In both cases, the grant of citizenship is far from automatic after the necessary qualification period has been achieved. Relatively few foreign workers accede to citizenship although both countries currently are considering less restrictive naturalization procedures. Children of alien workers born on Swiss or German soil do not automatically receive citizenship as in the United States. In France, children of alien workers can declare French citizenship upon reaching their majority.

7. The nonimmigrant-welcoming tradition of the FRG is best expressed by the slogan, "Deutschland ist kein Einwanderungsland." Swiss officials saw alien workers as a conjunctural complement to the workforce. See, H.J. Hoffman-Nowotny and Martin Killias, "Switzerland," in *International Labor Migration in Europe*, R.E. Krane, ed., pp. 46-47.

8. See, Eidgenoessische Konsultativkommission fuer das Auslaenderproblem, *Information*, No. 10, February, 1980, pp. 127-148.

9. Cf. Catherine Wihtol de Wenden, *Les Immigres dans la Cité*, (Documentation Francaise, 1978, Paris.)

10. On Norway's racial question, see *Migration Today*, No. 24, 1979, pp. 18-19.

11. President Carter's immigration reform proposals included the granting of five year, perhaps renewable "temporary" work and residency rights to illegal aliens who arrived after 1970. Sidney Weintraub has proposed a five year guestworker-type phase out plan to ameliorate the illegal alien problem. According to the *New York Times* of February 19, 1979, President Lopez-Portillo of Mexico proposed to President Carter that Washington consider a guest migrant worker program similar to that of Turkish workers in West Germany. See U.S. Senate Judiciary Committee document, *Temporary Worker Programs Background and Issues*, (Washington, D.C., 1980).

12. Le Nouveau Journal, October 6, 1978.

13. *Le Monde*, June 15, 1979, pp. 1; 38-39 and *Jeune Afrique*, No. 948, March 7, 1979, pp. 44-45.

14. Cf. W.R. Böhning, op. cit., pp.

15. See, Mark Miller and William Boyer, *Foreign Workers in the U.S. Virgin Islands: Lessons for the United States*, (APSA 1980 convention paper), pp. 11-12.

16. The Federal Republic still permits several hundred Korean coal miners and Filipino nurses in on short-term contracts but does not consider them seasonal workers as they stay for at least one year.

17. The foreign workforce in 1972 was estimated to be 1.8 million.

18. See, for example, Jean Ziegler, *Switzerland: the awful truth*, p. 123, *Tribune de Genève*, August 19-20, 1978, *Fasti-Doc*, "Les Travailleurs Saisonniers Étrangers," No. 4, February, 1979, p. 6, Jonathan Power, *Migrant Workers in Western Europe and the United States*, pp. 33-34 and *Libération*, October 6, 12, 1977.

19. Silvio Ronzani, "Auslaendische Arbeitskraefte" in *Handbuch der schweizerischen Aussenpolitik*, pp. 840-842, Josef Doleschal, *Das Problem der auslaendischen Arbeitskraefte in der schweizerischen Arbeitgeberpolitik*, pp. 69-70, *Sueddeutsch Zeitung*, October 26, 1973.

20. OFIAMT, *Directives et Commentaires*, (October 25, 1976), pp. 66-68.

21. *Tribune de Genève*, August 19-20, 1978 and April 16, 1980, Police federale des Étrangers, Circulaire No. 13/76 of 25 October, 1976, pp. 31-32 (French language version).

22. Interview Mr. Cap[illegible]al, ONI, July 22, 1980.

23. *Information*, No. 10, p. 141.

24. Abdellah Boudahrain, *Regime International des Travailleurs Migrants Marocains*, (unpublished doctorat of law thesis, University of Paris I, 1978.)

25. See, for example, *La Suisse*, March 24, 1980 (as condensed in *Migration Today*, No. 27, p. 11.)

26. Michèle Brahimi, Les Travailleurs Saisonniers et Frontaliers, *Notes et Études Documentaires*, Nos. 4519-4520, p. 53.

27. *Ibid.*, p. 38.

28. Jean Benoit, *Le Monde's* immigrant affairs reporter, used the term slave in the title of his new book, *E . . . comme esclave*, (Alain Moreau, 1980, Paris.)

29. J. Power, *op. cit.*, p. 34, J. Ziegler, *op. cit.*, p. 121, Eidgenoessische Konsultativkommission fuer das Auslaenderproblem, *Problèmes Humains des Travailleurs Étrangers et de leurs Familles*, pp. 36-37.

30. There are an estimated 10,000 illegal alien children in Switzerland. (See footnote 29)

31. Officials interviewed requested anonymity. All concurred that spouse and child labor was widespread. CFDT sources regard the "sans-contrats" as legion. See *Libération*, October 12, 1977.

32. *Libération*, October 6 and 12, 1977, *La Croix*, October 23/24, 1977 and *Le Matin*, October 8, 1977.

33. See, *Time*, September 10, 1979, p. 41.

34. S. Castles and G. Kosock, *Immigrant Workers and Class Structure in Western Europe*, pp. 160-162.

35. René Riedo, *Das Problem der auslaendischen Arbeitskraefte in der schweizerischen Gewerkschaftspolitik*, pp. 88-89. A Swiss Federal Council report of May 28, 1973 reads as follows: "Experience has shown that seasonal workers are the first to become involved in industrial disputes. Internationally, too, the problem of seasonal workers has caused Switzerland considerable difficulty." Quoted in J. Ziegler, *op. cit.*, p. 122.

36. R. Riedo, *op. cit.*, p. 89.

37. Leon Gani, *Syndicats et Travailleurs Immigrés*, pp. 120 and 186.

38. Letter by Willy Gitler, Secrétarie Confédéral, to Jean Matteoli, Ministre du Travail et de la Participation, dated July 7, 1980.

39. *Libération*, October 12, 1977.

40. Witness the activities of the Centre Social Protestant in Lausanne and Geneva or those of Father Saphy, Aumônier rural des étrangers, in southwest France.

41. CEDETIM, *Les Immigrés*, p. 278 and J. Benoit, *op. cit.*, p. 299.

42. See, *Migrant Women Speak*, (World Council of Churches, 1978, Geneva), p. 103, *Tribune de Genève*, August 19/20, 1978 and *Journal de Genève*, April 16, 1980. The pro-foreign worker "Être Solidaire" group has been trying to make the question of banning the seasonal worker statute a referendum question.

43. The most detailed study of the anti-Marcellin-Fontanet Decrees movement among foreign workers is Sylvie Liehart's thesis, *Les Circulaires Marcellin-Fontanet et les Luttes des Travailleurs Immigrés*, (Thèse de Maitrise d'Économie Politique, 1975, University of Paris VIII). Also, see J. Benoit, *op. cit.*, pp. 308-311, CEDETIM, *op. cit.*, pp. 278-283. The newspaper *San Frontière* of January 1, 1980 includes an extensive listing of incidents involving *saisonniers*.

44. M. Brahimi, *op. cit.*, p. 11.

45. *Ibid.*, p. 33.

46. See, Carmel Sammut, "L'immigration clandestine en France depuis les circulaires Fontanet, Marcellin et Gorse," in *Les Travailleurs Étrangers en Europe Occidentale*, P. Bernard, ed., (Mouton, 1976, Paris.)

47. W.R. Böhning, *op. cit.*,

48. Phil Martin first expressed this notion.

49. Most recently, the Italian under-secretary for Foreign Affairs, Mr. F. Foschi threatened to accuse the Swiss of human rights violations at the Belgrade conference. See, *L'Année Politique Suisse*, 1977, p. 120.

50. The attaché in question is Mr. Grañon in Agen. ONI officials maintained that Spanish-French relations were excellent.

Table 1

Seasonal Worker Employment 1960-79

	France	Switzerland
1960	109,798	139,538
1961	96,956	173,459
1962	95,093	194,110
1963	101,274	201,348
1964	120,950	206,305
1965	131,571	184,235
1966	124,270	164,569
1967	113,971	153,514
1968	129,858	144,081
1969	132,871	149,201
1970	135,058	154,732
1971	137,197	180,828
1972	144,492	196,632
1973	142,458	193,766
1974	131,783	151,962
1975	124,126	86,008
1976	121,474	60,698
1977	112,116	---
1978	122,658	---
1979	124,715	96,000

(Sources: H. [illegible]. Hoffman-Nowotny, *Soziologie des Fremdarbeiter problems*, p. 47, R. E. Krane, ed., *International Labor Migration in Europe*, p. 47, EKA, *Information* No. 10, February, 1980, p. 136.)

Table 2

French Seasonal Labor Employment by Economic Sector
Selected Years 1946-1979

	Agriculture	Industry and Commerce
1946	11,542	---
1950	12,380	3,535
1955	31,205	4,071
1960	103,498	6,300
1965	126,556	5,015
1970	127,928	7,130
1975	118,816	5,310
1979	119,220	5,495

(Source: Office National d'Immigration, *Statistiques de l'Immigration*, 1979)

Table 3

French Seasonal Labor by Nationality
Selected Years 1946-1979

Year	Port.	Yugo.	Belgium	Spanish	Italian	Moroccan	Tunisian
1946	--	--	10,880	--	662	--	--
1950	--	--	11,119	--	4,796	--	--
1955	--	--	9,589	2,880	22,812	--	--
1960	937	--	6,665	69,150[a]	32,977	--	--
1965	4,190	7	2,725	119,039	4,875	2	--
1970	3,004	440	779	124,236	843	593	65
1975	2,138	259	379	109,215	169	5,385	252
1979	8,235	255	196	101,098	29	10,515	973
						12,597	1,504

[a] Spanish harvesters were not counted until 1960.

(Source: Office National d'Immigration, *Statistiques de l'Immigration*, 1979)

Table 4

Number of Seasonal Work Holders Granted Yearly Permits in Switzerland
1968-1979

1968	3,500
1969	7,700
1970	6,000
1971	8,300
1972	11,900
1973	11,600
1974	9,600
1975	7,900
1976	9,200
1977	5,800
1978	4,100
1979	3,700

(Source: W.R. Bohning, *Guestworker Employment with special reference to the Federal Republic of Germany, France and Switzerland - lessons for the United States?* Center for Philosophy and Public Policy, University of Maryland, 1980).

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LONG-TERM PROBLEMS

Senator SIMPSON. Dr. Gregory, most Western European officials who are in contact with the subcommittee staff admit that the guest worker program in Europe did not operate as they expected, and therefore they are counseling us that such a program would present some long-term problems that might be as bad or even worse than the illegal immigration system out of control.

What is it that leads you to believe that indeed the European program was successful and worth emulating in the United States? That would be helpful for me to know your views.

Mr. GREGORY. To begin with, there is nothing like hindsight. In the areas of international labor emigration, when you try to make a detailed cost-benefit analysis, often what begins as a benefit in the long term can begin to turn into a cost. The reverse is also true.

Europe's economic expansion at the end of the Second World War, Germany, Switzerland, and France, would not have occurred without the large importation of foreign labor.

Second, those workers who were involved, who came from the Mediterranean countries in particular during the first stage, changed their lives dramatically. I have worked in Europe since 1963 and I have been able to sort of watch this change over a decade. I have watched an architectural renaissance and an improvement in the lifestyle of many of the people who have, with sacrifices, participated in this program.

We do not live in a perfect world. We are not going to find a perfect solution or a utopian solution. But both the employers and the migrants themselves have found it, unlike many of the politicians, to have been a very viable and important option.

The reason the politicians do not find it viable is because this type of immigration has its social costs as well as its economic benefits. In the long run it might have economic costs as well, but in almost all cases the social limits and the social tolerance is reached before the economic limits.

Germany, who ceased its immigration in 1973, ceased it not just for economic reasons but more for social reasons to begin with, because that social limit of tolerance had been reached.

Senator SIMPSON. With your background professionally as an anthropologist, how do you counter the concerns that are expressed by those who believe that a large temporary worker program would perpetuate a current de facto underclass of persons able to work at jobs which Americans refuse to do and not be able to claim equal rights under the law?

Mr. GREGORY. A badly designed program would do just that. If you look at many of the European programs, and again the German in particular, one of the major stipulations is that the immigrant worker—and this is quite different from anything like a bracero program or an H-2 program—a temporary worker has the same work rights as a German at the same level of industry. There is not this kind of discrimination.

We always seem to lump temporary worker programs with the bracero and the H-2 within our own cultural bias, our own cultural perspective. Very few countries in Europe would recognize the bracero and H-2 as a temporary worker program.

There is this danger of creating a second class of citizens, not so much with the first generation but with the second generation of those, that small fraction that Professor Miller said remains behind. It is only by insuring that they receive equal treatment under the law, as well as providing them with the proper educational facilities, that this can be avoided.

It is also important in a sense to realize that, yes, some of these immigrant workers will try to upgrade their status if they decide to try to become permanent. They will try to get out of agriculture or lower grade skills, and why not?

Senator SIMPSON. You heard me ask this question before, that although many employer groups were invited to testify on this particular issue—they certainly make themselves available on almost every other one of any kind—that only agricultural employers are interested in appearing on this issue of temporary workers.

INTEREST OF NONAGRICULTURAL EMPLOYERS

In your contacts with the U.S. business community, have you seen or perceived any official or organized interest among other employer groups on this issue?

Mr. GREGORY. That is a very interesting question. While most of the descriptions of job occupations or job categories today have been primarily focused on agriculture, when we have seen that the Mexican temporary worker or illegal undocumented immigrant has moved out of agriculture and is in many different areas of our economy. In a recent article in June in the Harvard Business Review, they list companies such as Exxon, Du Pont, General Foods, Schwinn, and many others that are part of the Fortune 500 as having high percentages of Mexican workers in their ranks.

So why have they not come forward? One reason I think is that they are afraid to become involved in problems directly related to designing the future structure of our labor force. They think it is a no-win position for management or for business. They do not really quite understand the temporary worker program and certain individuals from very large companies have said it is probably the thing they could do without the easiest in the entire immigration proposal.

The risk involved with increasing disagreement with their own American labor force and the American labor movement by coming out strongly for a temporary worker program is not in their interest. To come out against it, however, is not in their interest either because they are already benefiting from it in very large numbers.

The problem is you cannot have a temporary worker program without employer sanctions, and you cannot have a temporary worker program without contracts, and these are two issues that this proposal or any others do not deal with directly. And they are issues that I think the business community certainly does not want to deal with directly.

Senator SIMPSON. Well, I appreciate that.

You did state that we have this de facto temporary worker program already, and that our choice is whether to legalize it or not. There may be another choice. Should we accept the existing level of dependence on foreign labor, whether or not it is legalized? Should we not seek to make extraordinary and significant efforts to provide the jobs to Americans first?

If we had allowed industries in the past to import cheaper foreign labor at will or to employ that labor, might not many of our advances in productivity and technology have failed to take place?

Mr. GREGORY. Well, I would say definitely this is what we should do. But take the whole Southwest border region, which still has the potential for a great deal of growth within the range of instituting traditional manufacturing technologies. In this area there is a definite lack of young indigenous personnel who will take these jobs, and if you completely try to close off the border, which you can't do, and block this movement of labor, you will not have that type of industrial expansion which is so necessary in that particular region.

Senator SIMPSON. Thank you.

I will ask Mr. Day, the chief counsel and staff director, to ask just a couple of questions of Dr. Frederickson, and then I will be right back. I hate to do that. I don't like to do it very often, but I will. I have to meet someone for just a moment.

U.S. EMPLOYER STUDIES

Mr. DAY. Dr. Frederickson, do you know of any other studies similar to your own which have attempted to learn whether U.S. employers of illegal aliens could afford to pay a sufficient wage to attract domestic workers? Do you have any impression of whether your conclusion that San Diego employers in each of the industries you surveyed, agriculture, restaurants, and electronics, could afford domestic workers is valid for other parts of the country?

Mr. **Fredrickson**. That is why we got into the issue of migratory laborers, because we found that there were not groups anywhere in the United States that were interested in regional impacts, and we felt that this was a significant problem in our area.

As far as we know, there has not been a study on employers since the 1930's, so this was why we got into it. We don't like to go beyond our own objective data and project our answers as being correct for the rest of the United States. We feel that there should be more regional studies in terms of trying to find out what are the impacts of undocumented in those specific labor markets.

INCREASING NUMBER OF FARMWORKERS

Mr. **Day**. In your testimony you state that temporary alien farmworkers should not be admitted unless they are paid a wage which would not depress the wages of U.S. workers. Wouldn't the increase in the number of farmworkers necessarily cause a lower wage because of supply and demand?

Mr. **Fredrickson**. Would increasing the number of——

Mr. **Day**. Would increasing the number of farmworkers necessarily cause a lower wage?

Mr. **Fredrickson**. Well, whenever you increase workers, it is going to depress the wage, that is true. What you are suggesting, could you repeat the part about the adverse effect wage, because that seems to be a significantly different part of the question.

Mr. **Day**. You in your written testimony say that temporary alien farmworkers should not be admitted unless they are paid a wage which would not depress the wages of U.S. workers. Under the laws of supply and demand, just bringing in the supply, increasing the supply of farmworkers would reduce the wages, wouldn't it?

LOWER WAGE RATES

Mr. **Fredrickson**. Let me give you the situation in San Diego County. The farmers in north San Diego County have been able to lower their wage rates. I might add that they use about 98 percent undocumented immigrants at this point. South San Diego County farmers have not been able to do so. The north San Diego County farmers have land which is far more difficult for the border patrol to raid, so they have been able to substitute the undocumented immigrants for their legal farmworkers and at the same time undermine the operation of the marketplace, in this case subvert unionization of the illegal workers.

This does not mean that we are suggesting that a high rate is going to favor the union, but neither does it mean that you should protect the grower with illegal or guest workers. The higher wages in south county are those paid primarily to legal resident workers involved in a study where growers could not step outside the lawful framework. They are very close to the border and that is primarily where most of the border patrol raids are made.

It would seem logical that an adverse effect wage rate in this county should be based on wages paid to legal resident workers in the south county, which just coincidentally happens to be the union wage rate in the area. So, you know, it seems like right now the system favors the north county farms and really is supplying the north county farms with a supplement because 98 percent of the people in that area are undocumented immigrants.

Joe Rosso from the State of California's EDD made a study last year of the farms in San Diego County and he found that nearly one-third of all those farms were paying under the minimum wage and were subjecting their employees to violations of not only the wage rate but of the working conditions on the farms.

So that is the de facto situation in our county right now, and I think if you increase them, by whatever means, the guest worker program, it is going to depress the wages. What we are saying is don't bring them in there unless you bring them in at at least union wages. That is one of the conditions that we would set.

Mr. DAY. That is kind of a mutually exclusive situation, though, isn't it?

Mr. FREDERICKSON. We don't think so.

Mr. DAY. If you don't bring them in, it will depress them, but if you do bring them in, it will depress wages.

Mr. FREDERICKSON. Yes, that is true.

DOMESTIC LABOR

Mr. DAY. You also state that the farmers should first exhaust the available domestic labor in their region. Should not domestic labor from outside their region also be given an opportunity to fill the jobs before foreign workers are imported?

Mr. FREDERICKSON. That is definitely the case. We are just saying that right now in south county there is a 30- to 40-percent unemployment rate among farmworkers. Imperial County 7 years ago was busing in by the busload workers from the Imperial Valley that were out of work for the seasonal work over in north county, but why don't they use these workers any more?

There is a 30- to 40-percent unemployment rate amongst them, and when we say unemployed, we make a really strong distinction about unemployed as a general reference term. We are talking about those people that actually work in farmwork. In San Diego County, 100 percent of the farm laborers are Mexican. You know, they are not the Detroit unemployed that you are trying to take out to pick pickles. These are Mexican citizens—excuse me, American citizens of Mexican heritage, and they may be the commuter workers that come in.

We are suggesting that the commuter workers ought to be considered also. I would agree with your statement.

Senator SIMPSON. In your testimony you made reference to a letter appearing, I think, in a San Diego paper, about a person—it mentioned the threat of violence——

Mr. FREDERICKSON. Yes.

Senator SIMPSON [continuing]. Against a domestic worker who was seeking to regain a restaurant job he had been fired from so that an illegal alien could be hired. Do you believe that that is a common occurrence?

Mr. FREDERICKSON. Well, one of the things that we did find is that in almost every restaurant that we interviewed, and we found that this was fairly common practice from our contact people, we found that there was always a middleman and that middleman always brought in the workers from the other side.

You know, one of the things you wanted to know was why other employers were not interested in coming to hearings on the guest worker. They don't really feel you are ever going to cut off their undocumented workers. They don't think that is a possibility. And when we talked to the restaurant owners about do you want a guest worker program, you know what they said to us? They said, oh, no, we only want good, hard-working citizens here in the United States. That is a political question. We don't even want to deal with that.

In other words, what they were saying to us was we are going to look closer at those people who are going to be citizens, but right now these people are doing our work and we don't think they are ever going to get cut off. A guest worker program was a bureaucratic kind of thing as seen by these restaurant owners that was going to interfere with their ability to get workers.

FIRING OF LEGAL WORKERS

Senator SIMPSON. I think you may be right. I think that perception may be true.

You also mentioned the possibility that farmers might employ domestic workers for less than the normal workday in order to make it appear that they had a need for foreign workers. You referred also to the firing of legal workers in order that illegal aliens could be hired. Do you have evidence of those practices now occurring?

Mr. FREDERICKSON. Yes, we do, a court case. The *Kawano* court case has just been settled. One of the farms was convicted of this where they were caught in a case where they were actually firing domestic workers if they found out they had papers or that they could prove their citizenship or their residency.

I would cite you that. See, for example, *Kawano, Inc.* v. *The ALRB and the UFW of America,* that case. Look at it very carefully.

I think that the growers have a pretty good knowledge of who is legal and who isn't. We saw practices, for instance, on their farms in north county where they put the illegal workers off in the areas furthest from the roads where the INS couldn't raid them as easily, and we asked the owners—you have to understand our method is not a questionnaire methodology. We stayed with these farmers and tried to understand their perspectives on things, tried to walk in their shoes.

We asked them: Why do you do this practice? They said: Oh, well, you know, it takes longer to get here. And they have a whole system where they come to the first gate and the farmers have already notified those in the back hills and they spread out through the mountains and into the ravines before the INS gets there. This is a common practice.

Senator SIMPSON. Common practice?

Mr. FREDERICKSON. Yes; I would say it is in the north County of San Diego. I can't speak for other areas.

Senator SIMPSON. Professor Miller, please, I know of your rich background in this area. I ask you, other than the countries which were a source of temporary workers, did any European country either avoid the use of foreign labor altogether or restrict it to truly seasonal workers who had returned to their home country every year? If so, what could you share with us about the economic performance of such countries?

Mr. MILLER. To my knowledge, no Western European country totally went without foreign workers, nor did any Western European country rely strictly on seasonal workers. The Western European country with the fewest foreign workers would be Norway, which has a tiny population and only imported about 70,000 foreign workers. It would be very hazardous to try to make an assessment of the economic performance in light of the fact that all Western European countries had foreign workers.

ASSOCIATION OF NATIVE AND FOREIGN WORKERS

Senator SIMPSON. In your testimony you also mentioned that native workers come to shun the jobs associated with foreign labor. That seems prevalent. That is, native workers desert those jobs and the industries become even more dependent, then, upon foreign labor. Do you have any advice as to how a transitional program might be designed so that the U.S. employers now dependent upon illegal alien workers might be given time in order to adjust to this decreased supply of foreign labor?

Mr. MILLER. I think that would be the major justification for an expanded temporary foreign worker program. It seems to me to make some sense to advocate an expanded temporary foreign worker program to cushion employers during a transition period.

FRENCH AND SWISS SEASONAL PROGRAMS

Senator SIMPSON. You also stated that the French and the Swiss seasonal programs have been rather effective, at least in getting them to return to their home countries, that part of it, and that is in contrast to guest worker programs. Could you explain that difference and describe how those seasonal programs, just briefly, are administered?

Mr. MILLER. First I should point out that only France and Switzerland have seasonal worker programs, and the primary characteristic which differentiates them from foreign worker policies in general is that under these programs, seasonal workers are admitted for periods of time less than 1 year and are required administratively to return home each year.

Guest workers, on the other hand, by and large were not required through administrative procedures to return home. In fact, what happened was that there was a systematic renewal of permits throughout the post-World War II period up until 1975 when Europeans started to rethink guest worker policies in general.

What happened then was that they closed off the flow of workers into Western Europe.

Senator SIMPSON. You mentioned in previous testimony, mentioned the socioeconomic impact or sociopolitical tensions which have occurred as a result of the largescale foreign worker program. Could you just expand briefly on that?

Mr. MILLER. Yes; I think there are perhaps four major areas where sociopolitical tensions are apparent. First there are widespread problems of discrimination and racism toward foreign workers in Western Europe. This goes into areas of housing, employment, all sorts of areas.

Second, when Europeans started to realize that these foreign workers were staying on permanently, say in the post-1973 period, domestic worker displacement became a retroactive issue in countries like Germany and France which all of a sudden had mushrooming populations of the unemployed. Aliens are oftentimes blamed, largely incorrectly, for high rates of domestic worker unemployment.

Third, another area of sociopolitical discord was that as a result of perceived affronts to the dignity of migrant workers, you saw in several cases, especially the *Franco-Algerian* case, a certain tension set in in bilateral relations. The Franco-Algerian program did not have an exclusively beneficial effect on bilateral relations. Indeed, there was a great deal of tension between France and Algeria because of French treatment, alleged mistreatment of foreign workers.

Fourth, migrant populations are large and they are going to grow in the future. The average Frenchman or German began to feel that they were a foreigner in their own land. This type of resentment is very volatile.

Senator SIMPSON. In any country.

Thank you so much. That is another rollcall vote, and after doing that, I must go to Dulles and hit the wilds of Wyoming. So thank you. I appreciate very much your testimony. You were very helpful, all three of you; and your views, although divergent, are extraordinarily pungent on the issue of temporary workers. That is what we were seeking, and you certainly provided that.

I thank you very much, all three of you.

That will conclude the hearing for today. Thank you.

[Whereupon, at 3:45 p.m. the hearing was concluded.]

APPENDIX

Additional Submissions for the Record

October 23, 1981

Hon. Alan K. Simpson, Chairman
Subcommittee on Immigration and Refugee Policy
Senate Committee on the Judiciary
A509 Immigration Building
Washington, D.C. 20510

Dear Mr. Chairman:

This letter submits the view of the American Apparel Manufacturers Association (AAMA) on the experimental guest worker program proposed by the Administration's immigration and refugee policy recommendations. We would appreciate it being included in the record of hearings on this subject.

AAMA is the central organization of the United States apparel manufacturing industry. Our membership represents about two-thirds of domestic capacity for apparel production and includes all segments of American apparel manufacturing.

The views of AAMA's member companies on this issue are mixed. Some feel the proposal, insofar as their operations are concerned, is impractical since the investment in time and training for such employees would not be justified for a short period of employment or under circumstances that offer no assurance that work authorizations would not be revoked before the expiration of the work period. Others feel the program would be worthwhile were it to alleviate a genuine shortage of willing and qualified workers, and if it helped soften the problems which can be reasonably anticipated from reductions in job opportunities for undocumented aliens which other aspects of the Administration's proposal might be expected to produce.

On balance, AAMA supports a reasonable, experimental guest worker program provided it meets certain criteria. Chief among these is our strong recommendation that only qualified workers be admitted and that sewing machine operators and other comparable or lesser skilled jobs not be excluded by federal legislative or regulatory edict from the job categories eligible for guest worker hirings.

AMERICAN APPAREL MANUFACTURERS ASSOCIATION
1611 North Kent Street/Suite 800/Arlington, Virginia 22209
703/524-1864

We note the statement of Under Secretary of Labor Malcolm Lovell, Jr. before the House Subcommittee on Immigration, Refugees and International Law on October 14, 1981 that jobs for guest workers "could be in any occupation, either skilled or unskilled. The jobs could also be in occupations of a temporary or permanent nature." We support this postion.

AAMA also supports the planned implementation of the program outlined by Secretary Lovell. As we understand it, certification as to the need for guest workers and findings of "adverse affect" on the state, regional or local labor market would be made by the participating states. The role of the United State Department of Labor would be confined to allocating temporary guest workers and evaluating the operation of the program. We believe this to be a proper delineation of the roles of the states and the federal government.

Whether 50,000 is a sufficient or insufficient number of guest workers to achieve the Administration's immigration objectives may be open to questions. But since part of the Department of Labor's assessment of the program will include a recommendation on the subsequent need for and size of a guest worker program, we take no position on this subject.

Sincerely,

G. Stewart Boswell

G. Stewart Boswell
Director, Government
Relations Division

GSB:bal

STATEMENT OF
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND (MALDEF)

BEFORE THE SENATE COMMITTEE
ON IMMIGRATION AND REFUGEE POLICY

Washington, D.C.
October, 22, 1981

This written testimony is submitted on behalf of the Mexican American Legal Defense and Educational Fund. MALDEF is a national civil rights organization dedicated to preserving the civil and constitutional rights of Americans of Mexican and Hispanic descent. In addition to our San Francisco headquarters, we have offices in San Antonio, Los Angeles, Chicago, Denver, and a very active office here in Washington, D.C. Since our founding in 1968 we have been involved in the most important legal controversies in the areas basic to the lives and opportunities of Mexican Americans: educational and employment opportunities, voting and political rights, and abuse of authority. In recent years issues of immigration policy and aliens' rights, occasioned mainly by a series of negative and restrictive proposals for federal legislation and by an increasing pattern of arbitrary and provocative law enforcement activity directed against Mexican immigrants, have become a major concern of MALDEF.

Mr. Chairman, I appreciate this opportunity to continue our dialogue on these issues. MALDEF's President and General Counsel, Vilma S. Martinez, testified on May 6, 1981 before the Joint Senate-House committee hearings on these same issues and presented extensive written testimony setting out MALDEF's positions on many issues including the proposed guest worker program. MALDEF has also presented written and oral testimony before several hearings of the House Subcommittee on Immigration and Refugee Policy, and of this Committee. Our written testimony today will expand on our earlier testimony and is in the context of our comments on other aspects of the proposed immigration law "reform" package presented by the Administration.

Proposed Guest Worker Programs

In the past year, a number of legislative proposals for "guest worker" programs have been introduced in Congress. Specific proposals range from updated versions of the bracero program for contract labor[1] to the issuance of temporary entry and work permits for all who request them. On July 30, 1981, President Reagan announced the Administration's recommendation for an experimental, two-year program that would admit up to 50,000 Mexican nationals annually as temporary workers.[2] They would be allowed to work in the U.S. for a very limited period--up to 9-12 months. The Mexican temporary worker would ostensibly be a free agent in the labor market. However, he would be prohibited from seeking employment in any state which certifies that there is an adequate supply of American workers. During his stay in the U.S., he would supposedly be entitled to "normal wage and working conditions". But the foreign worker would not be eligible for unemployment insurance, and would be similarly disqualified from public assistance programs. Furthermore, he would not be permitted to bring his spouse or children in the U.S. with him.

MALDEF opposes the enactment of any temporary worker program and in particular the program put forward by the Administration. Past experience has shown us that "guest worker" programs do not adequately safeguard the right of foreign workers to fair treatment; nor do they prevent the erosion of the civil rights of Mexican Americans, which a large-scale guest worker program would trigger. All the proposals require the creation of a cumbersome and costly regulatory mechanism. Moreover, guest worker programs simply will not work. They will not stop or diminish the flow of undocumented aliens; on the contrary, they are likely to increase it. Nor will they provide an adequate mechanism for meeting our economy's labor needs.

Past Guest Worker Programs

Before guest worker programs were institutionalized, Mexican workers were imported to the American Southwest and summarily expelled as dictated by labor needs, often with attendant hardship to the workers and their families.[3] After importation of Asian laborers was stopped by exclusionary legislation in the late 19th century, the major industries of the Southwest--agriculture, railroads, and mining--turned to Mexico as a source of cheap and expendable labor. Mexican workers were imported in large numbers after the First World War and in the boom years of the 1920's. During the Depression years of the 1930's, the flow was reversed, as Mexicans returned--or were expelled--to their homeland. In the indiscriminate expulsions of that period, U.S. citizens were deported along with recent immigrants.[4]

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[1] The bracero program is described on p. 2-3 of this testimony.

[2] It is widely known that the 50,000-worker "experiment" is merely a foot in the political door of guest worker programs, and that proponents envision a vastly larger program with hundreds of thousands or even millions of workers annually, within a few years.

[3] H. Kiser, "Mexican American Labor Force Before World War II", Journal of Mexican American History, Vol. 2 (1972).

The first major guest worker program to be created was the Bracero Program. This lasted from 1942-1964, when more than 4 million Mexicans were admitted for agricultural work in the Southwestern U.S. Under this program, Mexican workers were abused by employers who held, by contract, complete control over the workers' ability to remain and work in the United States. Although the Mexican government had negotiated substantial labor rights for the workers, there was virtually no enforcement of these rights. Extremely low wages, heavy work loads, substandard housing and inadequate health care were the order of the day. During one economic downturn, in 1954, thousands of Mexicans were deported in the massive "Operation Wetback", and once again many citizens were swept across the border with them.[5] The exploitation and insensitivity shown to braceros was a major irritant in U.S.-Mexico relations and contributed significantly to anti-American feeling in Mexico for a generation. Of course, at that time the United States was not dependent on Mexico for anything other than cheap labor, so the adverse effects of the bracero program on foreign relations were not perceived as serious.

With the termination of the controversial Bracero Program in 1964, the only other means of bringing in temporary workers was through the "H-2" program.[6] About 30,000 foreign nationals, mainly from the Caribbean Islands, are admitted annually under this program to work in the apple and sugarcane harvests along the Eastern seaboard. While only a small number of Mexican workers have been involved in this program in recent years, the abuses suffered by the Caribbean workers support the allegation that guest worker programs are inherently exploitative. H-2 agricultural workers have been subjected to squalid living conditions. They live in barrack-type housing with little or no sanitary facilities. They have been forced to work long hours at a debilitating pace. They have been denied agreed-upon wages through manipulation of pay formulas and forced employee turn-over. When they tried to organize or protested against low wages and harsh working conditions, their visas were revoked and they were deported.[7]

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[4] A. Hoffman, *Unwanted Mexican Americans In The Great Depression* (Tucson: University of Arizona Press) (1974); Wayne A. Cornelius, *Mexican Migration to the United States: Causes, Consequences, and U.S. Responses* (Cambridge: MIT Press) (1978), pp. 16-17.

[5] Julian Zamora, *Los Mojados: The Wetback Story* (Notre Dame University Press, 1981); Ernesto Galarza, *Merchants of Labor: An Account of the Managed Migration of Mexican Farmworkers in California, 1942-1964* (1964).

[6] Enacted in 1952 under §101(a)(15)(H)(ii) of the Immigration and Nationality Act and 8 U.S.C. §1101(a)(15)(H)(ii).

Proposed Guest Worker Program Unacceptably Limit Workers' Rights

The legal rights of aliens in our country are very narrowly circumscribed.[8] Persons in the even more tenuous status of temporary worker would have no effective guarantee of basic fair treatment. Exploitation of guest workers is the inevitable result.

The Administration's proposal would not give the temporary worker any of the basic protections afforded under federal and state labor laws. He would have no protection of the right to organize nor any access to the courts for redress. There is no prohibition against use of guest workers being used as strike breakers. Of particular concern to MALDEF are the Administration's recommendations calling for restrictions on geographical mobility and job categories. The proposal that temporary workers be limited to certain occupations (mainly those which fail to attract domestic workers) offends principles of equality. In recent years, the courts have come to recognize that in the employment area, officially sanctioned discrimination based on alienage must be subject to a strict standard of review.[9] One Supreme Court decision[10] seems to indicate that Congress may advance four general motives to bar aliens from particular employment opportunities--to ensure political security, to create an incentive for naturalization, to provide the President with leverage in foreign negotiations, or to enhance economic security. None of these motives, however, are adequate to justify the wide-scale exclusion of temporary workers from major sectors of private and public employment.[11]

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[7] See: "Analysis of H-2 Program and Request for Rulemaking and Other Relief", filed before Secretary of Labor in re: Temporary Labor Certification Process for Agricultural Workers, be National Association of Farmworker Organizations (1978). See also: Ernesto Galarza, Merchants of Labor, supra.

[8] Aliens, even those who are lawful permanent residents, are not adequately protected by federal civil rights statutes. Private citizens' conspiracies against aliens are not covered by federal law (18 U.S.C. §241); organizations like the Ku Klux Klan can terrorize aliens without being subjected to federal criminal prosecution for civil rights violations. Although federal employment discrimination law prohibits national origin discrimination, 42 U.S.C. §2000c-2(2), the Supreme Court has ruled that discrimination based on alienage is not covered by this provision, Espinoza v. Farah Mfg. Co., 414 U.S. 86 (1978). That reasoning class into question the protection afforded even lawful resident aliens by federal civil rights legislation in the areas of housing, education, municipal services, and public accommodations.

The only serious argument for occupational restrictions is to serve and protect the economic interests of U.S. citizens. Underlying this reasoning is an assumption that the right to work and the benefits which accrue to employment are privileges or valuable resources to be dispensed according to citizenship status. Such an assumption of privilege versus right has been soundly rejected by the courts.[12] If the United States chooses to import foreign labor to satisfy its economic needs, then we must, if we are to remain faithful to our constitutional and democratic principles, accord foreign workers guarantees of equal employment opportunity.

Restrictions imposing limits on interstate travel also raise constitutional and practical problems. Provisions which place limits on a person's ability to travel run into direct conflict with the constitutional concept of the right to travel, which courts have viewed as a fundamental personal right.[13] This aspect of personal liberty is guaranteed by the Fifth Amendment against actions on the part of the federal, as well as state, government. To justify such a restriction requires the presentation of a "compelling governmental interest".

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[9] Graham v. Richardson, 403 U.S. 365 (1971); In Re Griffiths, 413 U.S. 717 (1973); Sugarman v. Dougall, 413 U.S. 634 (1973); Examining Board of Engineers v. Flores de Otero, 426 U.S. 572 (1976.

[10] Hampton v. Mow Sun Wong, 426 U.S. 88, 103-106 (1976).

[11] The argument of political security does not stand, because the exclusion of foreign workers from all positions other than those which cannot be filled by domestic workers is much broader than necessary to promote the need for loyalty in sensitive public positions. The rationale that a citizenship or permanent residency requirement creates an incentive for aliens to become naturalized citizens or permanent residents is inadequate since temporary workers will not be eligible for legalization. The argument that discriminatory policies toward guest workers will give the executive branch negotiating leverage in foreign affairs cynically ignores any equal protection considerations for aliens, in a way that can only damage our relations with Mexico or other source countries.

[12] Sugarman v. Dougall, 413 U.S. 634, 643-45 (1973).

[13] Shapiro v. Thompson, 394 U.S. 618, 641 (1969).

The only interest which the government can present in this instance is an economic one--and a poorly documented one at that--to protect and prevent displacement of the American work force by foreign workers. This economic and financial concern, absent other considerations, is not likely to be well-received by the courts;for they have rejected economic arguments in other areas where laws burden the exercise of the right to travel.[14]

The Proposed State Certification Requirement and Federal Regulatory Mechanism

The Administration's plan proposes the placement of guest workers according to allocations of the U.S. Department of Labor subject to vetoes by States which certify that they have no need for imported labor. Neither state governments nor the Department of Labor have the capability or the data collecting mechanisms to measure objectively the need for foreign labor within local and state labor markets, or the displacement of U.S. citizen workers that might occur. In the absence of reliable data, political opportunism will become a determining factor. In this period of already high domestice unemployment, and difficult economic conditions, few state public officials are likely to certify that there are no able, willing and available American workers in their state who can fill jobs sought by immigrants--unless the jobs are so undesirable that filling them with aliens could not be perceived as a political liability.

If this provision calling for state certification is implemented, it will result in greater federal involvement in the regulation of the U.S. labor market. Any proposed guest worker program will probably require the creation of a superagency to coordinate and administer the program. At a minimum, new responsibilities (budget and positions) will be thrust upon the Departments of State, Justice, Labor, Commerce, Agriculture and Treasury. It is doubtful, however, that all these agencies could accurately and in a timely fashion assess the precise needs for workers in particular jobs and locations.

Experience under the existing H-2 program demonstrates the pitfalls of this regulatory approach, and strongly suggests that there is unlikely to be any effective monitoring of the temporary worker program based on objective (not emotional) factors to assure that American workers will not be displaced. Under the H-2 regulations, employers must first seek domestice workers through state employment service offices on specified terms and conditions.[15] Only when efforts to recruit domestic workers fail can employers then seek foreign workers. The Department of Labor subsequently decides whether to issue a certificate of need for the workers, based on its review of the availability of domestic workers and the adequacy of attempts at recruitment. The Justice Department, via the Immigration and Naturalization Service, then admits workers as recommended by the DOL certification.

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[14] Shapiro v. Thompson, ibid. (welfare); Dunn v. Blumstein, 405 U.S. 330 (1972) (voting); Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974) (medical care).

There are two crucial steps in the recruitment and certification process. Employers and state employment services must demonstrate that they tried but failed to recruit domestic workers for positions on the same conditions as those to be offered foreign workers. Wages must be set at no less than the "adverse effect wage rate" (also known as "AEWR"), a figure determined by DOL as the minimum wage necessary to avoid depressing domestic wages. The reality, however, is that the methodology for determining the AEWR does not take into account individual job characteristics, such as physical difficulties in performing the job, or other features that may make a job unattractive (AEWR is based on a state-wide average), so that the AEWR is set at the minimum wage or a few cents above the legal minimum wage.

The AEWR and other terms and conditions required of H-2 employers were originally designed to operate at a "floor" on wages and working conditions. However, the practical effect has been to make these provisions into a "ceiling", impeding bargaining by U.S. workers and blocking improvement of working conditions through normal market forces. DOL regulations imply that U.S. workers must accept employment on the terms set forth by those same regulations. Thus, any U.S. worker who is actively seeking the job but demands a higher wage or better conditions is deemed "unavailable" by DOL.

The integrity of the whole certification process, and its fidelity to the basic programmatic purpose of enabling employers to obtain supplemental foreign labor when domestic sources cannot supply the needed workers, depends upon employers to make aggressive, good faith efforts to bridge the gap between the job order and the worker and upon DOL to monitor the recruitment efforts closely. In these critical aspects, the H-2 program has been widely abused and its purposes subverted. Employers who prefer to import foreign labor for the same reasons that made the Bracero Program attractice and profitable, assisted by the bureaucratic ineptitude of state employment services and the DOL, have successfully circumvented or manipulated the recruitment and AEWR requirements. Recruitment is often pro-forma, designed to fail, or is outright fraudulent. AEWR levels are kept artificially low to assure that domestic workers will not seek employment and to reduce labor costs for the employers. Both the DOL and the INS have succumbed to political pressures from employer groups to give certification even in those cases where employers failed to comply with DOL regulations.[16] These problems in the H-2 certification process and the weaknesses in DOL administration of the program raise serious doubts as to the practicality and effectiveness of the Administration's proposals for state certification and maintenance of "normal wage and working standards".

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[15] 20 C. F.R. §602.10 et seq.

The Guest Worker Program Will Fail to Accomplish Its Goals

The proposed guest worker program will not be successful in accomplishing its announced objectives of reducing illegal entries and effectively supplementing the U.S. labor force in areas where needed. Not only will a guest worker program fail to "stem the flow" of undocumented workers into the country, but it would have the opposite effect. While such a porgram might temporarily legalize and identify a segment of the immigrant worker population, it would ultimately increase the number of workers who enter or remain in the country illegally. Historical experience in both the United States and Europe shows that guest workers overstay their temporary visas or return illegally to places and jobs with which they became acquainted while temporarily admitted, and opt for the freer, albeit riskier, status of uncontrolled entry, employment and residence.[17]

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[16] The Presidio Valley incident of 1977 illustrates one of the basic problems in the certification system. In 1977, onion and cantaloupe growers in the Presidio Valley of West Texas applied for H-2 workers from Mexico. However, these growers refused to provide housing, pay the adverse effect wage rate, or comply with other H-2 requirements. DOL refused to accept the job orders and denied certification. The growers thereupon applied political pressure which eventually reached the White House. INS ultimately approved visa petitions for 806 H-2 Mexican workers.

[17] Miller & Yeres, A Massive Temporary Worker Program for the United States: Solution or Mirage? (Geneva: International Labor Organization) (1979). See also David S. North, Migration of Workers" What the U.S. Can Learn from Europe in Amnesty: Conferring Legal Status on Illegal Immigrants, p. B-12 (Washington, D. C., 1980).

The Administration's proposal specifically allows temporary workers to "free float" in the job market. Unlike past guest worker programs, which focused on the agricultural sector, the new recommendation would shift the emphasis to urban centers, since the largest number of jobs are available in these areas. In this situation, it would be even more difficult to enforce returns to the home country, because labor importation will send foreign workers into manufacturing and service sectors where labor needs are year-long rather than seasonal. Consequently, the attraction to stay will be much stronger. It will also be difficult to manage and control guest workers, particularly when turnover of large numbers of short-term workers, as envisioned by the Administration, creates huge turnover in the program. Administrative complexity will increase as the initial task of screening, selecting, and regulating temporary workers is supplemented by the need to handle requests for work permit renewals and job changes and to monitor the geographical movement of foreign workers.[18] To do the job effectively, a massive new bureaucracy would be necessary. In the present political climate, where creation of new regulatory structures is strongly disfavored, the result would be an uncontrolled situation.

A guest worker program limited to 50,000 entrants will not significantly impact either on the apparent appetite of American industry--particularly the service, light manufacturing, and agricultural sectors--for foreign workers, or on the many-times greater volume of undocumented immigration.[19] The minimal size of the proposed program--given the scope of the economic and demographic forces at play--make it little more than a pilot program whose value is no greater than its potential for future expansion. But any such expansion would greatly multiply the problems of retaining administrative control and ultimately reducing the illegal migrant stream.

A Temporary Worker Program Would Increase Discrimination Against Mexican Americans

The Administration's proposal is for importation of Mexican nationals. Those workers would be largely undistinguishable in physical and speech characteristics from many Mexican and other Latino citizens and permanent residents. The program's exclusive focus on Mexico would exacerbate already high levels of discrimination against Mexican Americans and other Latinos. It would reinforce racially tainted perceptions, already widespread in our population, that Mexican Americans are fit for low-level work not desired by other Americans, or that Mexican Americans are an expendable part of the workforce, due only second-class rights and jobs. It would also increase misdirected but very real resentment on the part of unemployed or underemployed Americans, including other minorities, who have been led to believe that Mexican immigrant workers displace them from jobs.[20] Such other workers would tend to see all Mexican Americans as "temporary" or foreign workers, not entitled to full rights or opportunities. Here again, the experience under the H-2 program is sobering. Most H-2 workers, other than a few celebrities, are blacks from Caribbean islands. Racial prejudice has been no small part of the barrier to fair treatment for these workers.

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[18] See generally, Phillip L. Martin, Guestworker Programs: Lessons from Europe, U.S. Department of Labor, Bureau of International Labor Affairs (Washington, D.C. 1980). This monograph analyzes the European experiences with guest workers and draws some lessons that are applicable to the U.S. temporary worker programs.

[19] While precise estimates of annual entries are somewhat speculative, one million per year--not including undocumented persons already present who remain here--is probably a fair guess.

Conclusion: Look Elsewhere for Solutions

In the end, the expedient adoption of an "experimental" temporary worker program will create many more problems than it will resolve. A more effective and fairer program would seek to incorporate those persons whose energy and skill we need into our society. Such a program would keep their skills, earnings, and savings here, rather than returning them to foreign countries at regular intervals. Workers who, over a period of time, staff our industries, pay taxes, and contribute to our economic welfare should receive the social and economic benefits accorded to U.S. residents. They should be given an opportunity to remain here and to become legal permanent residents and, eventually, citizens. What we suggest is simply a permanent upgrading of our workforce, in response to economic needs, instead of resort to ineffectual temporary measures which will undermine the status of Mexican Americans and other minorities. Such a permanent upgrading of the workforce would be accomplished by: (1) A significant expansion of annual visa allotments for Mexico, to at least 50,000 per year; (2) A fair, humane, and workable "amnesty" program to adjust the status of undocumented workers who have already made substantial contribution over time to our economy and society; (3) Fair and non-discriminatory enforcement of immigration laws by INS, including effective discharge of its service functions; and (4) Improved enforcement of laws to assure all workers the benefit of legal minimum wages, safe and adequate working conditions, and employers' compliance with federal labor legislation.

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[20] There is no evidence that such displacement actually occurs, and considerable evidence to the contrary. See, M.Vic Villalpando, A Study of Socioeconomic Impact of Illegal Aliens on the County of San Diego (San Diego County, 1977), pp. xii-xiii; Wayne A. Cornelius, "Illegal Mexican Immigration to the United States" (Cambridge: M.I.I., 1978), pp. 8-12.

Such a solution is complex and long-term--but it will work. We offer no easy remedies to intricate problems that defy quick resolution. We urge Congress to look in the directions we have outlined. To elaborate on the proposal for temporary worker programs would merely postpone and make even harder the ultimate reckoning.

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October 18, 1981

Subcommittee on Immigration and Refugee Policy
Committee on the Judiciary
United States Senate
Washington, D.C.

Re; Hearings on October 22, 1981; Administration's immigration proposals; Temporary Workers

STATEMENT OF ERICH PARK, EXECUTIVE SECRETARY,
ESTONIAN AID, INC., NEW YORK, N.Y.

Mr. Chairman and distinguished members of the Subcommittee;

I respectfully submit the following remarks on the subject of temporary workers in the Administration's immigration proposals, with a request that these be included in the report of the hearings;

Not an agricultural workers' program

In the absence of indications to the contrary, it seems reasonable to assume that the Administration's proposed "experimental temporary worker program for Mexican nationals" is not an agricultural workers' program.

In contrast to the old braceros program for farm workers, the new experiment is believed to be meant for non-agricultural occupations: the construction trades and restaurant, hotel, hospital, office, factory, and maybe even professional workers.

Privileges and benefits

It seems reasonable to assume that entrants under this program will share in the special privileges mandated by the Government for all Hispanics and non-whites: preferred employment under affirmative action policies. Also, unlike the braceros, they seem to be intended to be free to choose any kind of work, and not be subject to pre-arranged employment contracts.

Whether or not the proposed clause of ineligibility for welfare, food stamps, unemployment insurance, and Federally assisted housing would be honored by the courts, is questionable. No provision is made in the Justice Department's proposal about medical assistance and Social Security coverage, but it is reasonable to assume that no exclusion from these programs is intended.

"Temporary workers" are expected to stay

It is unrealistic to think that the bulk of the new "temporary workers" would not remain in the United States,

Some of them would simply not return, becoming red-carpet additions to the masses of illegal aliens. Others would obtain legal permanent resident status through such means as marriage to U.S. citizens, children born here to female "temporaries", private bills, court decisions, and future amnesties.

No effect on "Wetback" problem

The proposed "temporary workers " program will not affect regular illegal migration from Mexico. If even the very extensive braceros operations (over 450,000 Mexicans in 1957) were unable to control the "wetback" problem, much less can be expected from the new program, especially since that program deals with non-agricultural workers. (If at all, there could be some unfavorable effect: instead of easing it, the new program may even stimulate illegal entries. Every "success story" sent down in personal correspondence from north of the border may induce others to rush over here).

A good-will gesture

The proposal has to be accepted as what it actually is: a good-will gesture towards Mexico. The Administration has made a committment, the word is out, and whatever the merits or demerits, the program probably will be carried out.

Country ceilings vs. global limits

Inasmuch as the "experimental temporary workers " are expected to remain permanently in the U.S., their numbers will constitute an increase in the separate annual country ceiling for permanent immigration from Mexico. This will be in addition to another increase of 20,000 proposed for Mexico in the Justice Department's policy paper (page 6, chapter "C"). While opposing any and all "most-favored neighbors' " special quotas, I respectfully suggest that this extra increase be compensated through decreasing the global limit of legal immigration for each respective year of the "experimental" program.

Selection of applicants

It seems reasonable to recommend that only married persons with children staying in Mexico be selected for this program. Past violators of U.S. immigration laws should be excluded.

Imported labor vs. welfare and unemployment

It has been said that some States have special labor needs which the Government must take care of by using imported workers. At the same time, millions of Americans are on welfare, other millions collect unemployment insurance compensation, and additional millions either live on meager savings ore are supported by relatives.

The distribution and utilization of human resources is improper and unbalanced. We experience something that calls for social planning.

Whatever this particular Subcommittee will recommend about the proposals subject to these hearings, the long-range planning of immigration policy cannot be separated from the consideration of economic realities and of much-needed welfare reform proposals.

Respectfully submitted by

Erich Park